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or a violation of minimum subsistence rights?**

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## **Abstract**

Since the 1990s (Western) European welfare states have adopted a series of reforms aimed at promoting the return to employment of recipients of social assistance benefits. The economic crisis has prompted welfare states to cut the expenditures on enabling instruments and to opt increasingly for work-related sanctions (i.e. sanctions that are imposed on recipients who fail to comply with activation measures). This paper examines the regulation of work-related sanctions from a social rights perspective in 25 European welfare states. Based on this perspective, the paper investigates, first, the extent to which work-related sanctions are mitigated by specific legal clauses and by the composition of the social assistance benefits. Second, this paper investigates the relationship between the socio-economic situation of the European welfare states and the harshness of the sanctions. The paper concludes that the socio-economic situation in countries that have adopted harsh work-related sanctions reinforces the risk of violation of the right to minimum means of subsistence. The (relative) lack of mitigation clauses in these countries further reinforces this effect. In order to prevent this effect this paper recommends the construction of a system of social assistance benefits on which basis a work-related sanction only affects a basic component of social assistance benefits, without touching components for the costs for children, paternity, rent, heating and the partner.

## **Key words**

Activation, Social assistance, welfare to work, sanction, discretionary power, social rights

## 1. Introduction

Since the 1990s (Western) European welfare states have adopted a series of reforms aimed at promoting the return to employment of recipients of social benefits, including social assistance benefits. These reforms have been termed ‘activation policies’ and are based on the idea that a mix of so-called enabling instruments (employment and training services) and incentives (sanctions, eligibility conditions and workfare practices) enhance the labour market participation of unemployed people (Van Berkel and Hornemann Møller, 2002). The economic crisis has prompted welfare states to cut the expenditures on enabling instruments and to opt increasingly for work-related sanctions (i.e. sanctions that are imposed on recipients who fail to comply with activation measures) (Lødemel and Moreira, 2014).<sup>1</sup> In the literature we find three possible explanations for the preference for work-related sanctions over enabling instruments. First, enabling instruments are costly. Second, their effectiveness is questionable (Card *et al.*, 2010). Third, under some conditions financial sanctions have proven very effective for the re-integration of unemployed people (see further below).

From a social rights perspective, the preference for work-related sanctions is worrisome, in particular when it comes to the regulation of social assistance benefits.<sup>2</sup> Then, whereas these are benefits of last resort, the imposition of a (high) sanction may have the effect that the income of a sanctioned recipient falls below the poverty line. However, policymakers and social policy scholars in the field of activation policies tend not to look at work-related sanctions from this perspective.<sup>3</sup> Instead, they predominantly perceive work-related sanctions as a more or less efficient means to incentivize recipients (of social assistance) to work.<sup>4</sup> This standard view, which I call the ‘instrumentalist perspective’ still constitutes the main paradigm in activation policies. This paper challenges the instrumentalist perspective by examining the regulation of work-related sanctions in European social assistance regimes from a social rights perspective that, in conformity with the Conclusions of the European Committee on Social Rights,<sup>5</sup> takes into consideration the extent to which the legislation on work-related sanctions violates the right to basic means of subsistence.<sup>6</sup> As such the social rights perspective recognizes that activation policies, among which work-related sanctions, may not only have positive or neutral effects as is assumed under instrumentalist

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<sup>1</sup> However, note that Marchal *et al.* (2014) conclude that there were no decisive breaks in policy relating to minimum income protection during the first crisis years.

<sup>2</sup> Notice also that social assistance regimes have become increasingly important in conservative welfare states, where social security systems, to a great extent, used to rely on social insurance (Palier, 2010).

<sup>3</sup> See Section 2 on EU social policies, and see Marchal and van Mechelen (2015).

<sup>4</sup> See further Section 2.

<sup>5</sup> On the Conclusions of the European Committee on Social Rights, see Section 2.

<sup>6</sup> In the social policy literature there are a few authors who are also concerned with the right to basic means of subsistence in relation to activation policies (see for example, Dean, 2010). Generally speaking, legal studies are more concerned with (social) rights, among which the right to social assistance (see for example, Dermine, 2014).

perspective, but that activation policies may also have aversive effects, namely the violation of social rights (see Table 1). Moreover, using this view, it is acknowledged that the imposition of work-related sanctions may end up in the *social exclusion* (instead of the *active inclusion*) of welfare recipients.

**Table 1: Different perspectives on activation policies**

<b>Instrumentalist perspective</b>	<b>Social rights perspective</b>
'Neutral' instrumentalist approach to activation policies	Normative approach to activation policies
Focus on labour market participation	Focus on social rights protection
Activation policies are either effective (i.e. contributing to labour market policies) or neutral (i.e. not contributing to labour market policies)	It is acknowledged that activation policies can also have aversive effects, namely the violation of specific social rights

**Source: Constructed by author**

This perspective also gives rise to new research questions. Firstly, the question can be raised to what extent work-related sanctions are mitigated in order to safeguard some form of minimum income. This aspect of sanction policies is, for the most part, neglected in comparative studies on activation policies that focus on the duration and the percentage of the reduction of benefits (e.g. Marchal and van Mechelen, 2013; Langenbucher, 2015; Immervol and Scapretta, 2012; Venn, 2012). In legal terms, a breach of basic social rights is often permitted on the condition that the requirements of proportionality are fulfilled. Mitigation instruments may serve to fulfil these requirements. Examples of mitigation instruments are reparatory clauses, discretionary clauses and hardship clauses. For example, reparatory clauses mostly affect the length of the imposed sanction; discretionary clauses give the decision maker a tool *not* to impose a sanction; and hardship clauses may provide for some minimum benefits or goods where a sanction is imposed. In addition, the mitigation of a sanction can also occur in a somewhat unintended way, namely because of the composition of social assistance benefits. For example, in some systems a work-related sanction does not affect a specific component for children. As a result, a recipient with children who receives a sanction of 100% will not lose his or her entire benefits. Therefore, taking a social rights perspective on work-related sanctions, this paper also investigates the

extent to which work-related sanctions are mitigated by specific legal clauses and by the composition of the social assistance benefits.

Secondly, a social rights perspective raises questions about the socio-economic situation of the welfare states that have adopted a harsh sanctioning regime in their social assistance legislation. Note in this respect that there is no clear proof that the imposition of work-related sanction on recipients of social assistance results into their re-integration in paid work under all socio-economic circumstances. Studies that have proven that work-related sanctions are very effective (e.g., Arni *et al.*, 2015; Van den berg *et al.*, 2004; Abring *et al.*, 2005; Van der Klaauw and Van Ours, 2013; Bookmann *et al.*, 2014; Müller and Steiner, 2008; Svarer, 2011),<sup>7</sup> have all been conducted in countries with relatively low levels of unemployment. In addition, these studies have mainly been focussed on recipients of unemployment benefits, who are generally more employable when compared to recipients of social assistance. In contrast, some of the sparse studies on work-related sanctions imposed on recipients of social assistance with low job prospects are less optimistic (Kok and Houkes, 2011; Rosholm and Vejlin, 2010; SEOR, 2006; SEOR en Regioplan, 2014). For these recipients, the imposition of work-related sanctions may have the effect that their income falls (far) below the poverty line.

The relevance of the socio-economic situation of a country for sanction policies can be illustrated by two examples. Consider, first, the recipient of social assistance who receives a high sanction because s/he refuses to participate in a work project. Since social assistance benefits are benefits of last resort, one of the most obvious alternatives for this sanctioned recipient is to look for paid work to provide for his/her maintenance. Assuming that the work prospects for recipients of social assistance are lower in countries that suffer from high levels of unemployment compared to countries with relatively low levels of unemployment, it can be argued that recipients living in the former countries will be more at risk of lacking sufficient means of subsistence and that, depending on the harshness of the sanctions regime, this effect will be either (in the case of high sanctions) reinforced or (in the case of low sanctions) somehow mitigated.

Second, a sanctioned recipient who is not able to find a paid job may provide for his maintenance by asking family members or other people in his informal network for (financial) help. However, these people will be unable to help out when they also lack sufficient income. Assuming that sanctioned recipients of social assistance living in a country that shows high risks of social exclusion and poverty have more difficulty in finding financial

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<sup>7</sup> However, these studies have also shown that benefit sanctions lower the quality of post-unemployment jobs, both in terms of duration and in terms of earning (Arni *et al.*, 2013), and that sanctions are less effective after a relatively short period (Svarer, 2011).

help in their informal network compared to those living in a country that shows low risks of social exclusion and poverty, it can be argued that the former recipients will be at greater risk of lacking means of subsistence. Also in this case, depending on the harshness of the sanction regime, this effect will be either (in the case of high sanctions) reinforced or (in the case of low sanctions) somehow mitigated.

Previous research on activation policies (e.g., Cantillon and Van Mechelen, 2011; Marchal and Van Mechelen, 2013; Langenbacher, 2015), and the extent of poverty and social exclusion in European welfare states (Ramos Lobato and Kaup, 2014), seem to suggest that the socio-economic situation rather reinforces the risk of violating the right to minimum rate of subsistence in these countries. This paper will investigate the extent to which this is the case.

In order to answer the research questions, I have constructed a sanction indicator for 25 European welfare states. This indicator is more detailed compared to the sanction indicator for social assistance benefits that has been developed in previous research (Marchal and Van Mechelen, 2013).<sup>8</sup> In addition, I have made a distinction between a sanction indicator that takes account of mitigation mechanisms and one that does not. In order to answer the first research question, I compared for each European welfare state the sanction indicator and the number of mitigation clauses that has been stipulated. In addition, I separately investigated which components of the social assistance benefits are affected by a sanction. In order to answer the second research question, I compared the sanction indicator for the highest work-related sanctions (that takes account of mitigation mechanisms) with data from Eurostat on the level of (long-term) unemployment and the risk of social exclusion and poverty.

The paper is organized in the following way. Section 2 explains what it means to take a social rights perspective on sanction policies by comparing European Union social policies with the right to social assistance and the right to minimum means of subsistence. Section 3 discusses the possible effects of mitigation measures on (work-related) sanctions. Section 4 presents the data and methods. Section 5 presents the results and analysis. Finally, Section 6 draws general conclusions and provides some recommendations.

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<sup>8</sup> Others have constructed a sanction indicator for unemployment benefits (Venn, 2012; Langenbacher, 2015).



## 2. A social rights perspective on sanction policies

A social rights perspective on work-related sanctions implies that work-related sanctions are not only viewed as instruments of activation policies, but that we also look at the possible adverse impact of work-related sanctions on the right to minimum means of subsistence. This section will first argue that European social policies fail to consider this adverse impact, despite the fact that both the goals of activation of the unemployed *and* adequate income support are at the heart of current EU social policies. Assuming that the imposition of work-related sanctions will not necessarily ‘activate’ all recipients of social assistance into paid work, but may (also) result in a considerable reduction of the income of a number of these recipients, this section consequently assesses the extent to which work-related sanctions in social assistance schemes may violate the right to minimum means of subsistence that has been enshrined in various International Treaties.

At the level of EU social policy, activation policies and minimum income policies used to be separate policy areas.<sup>9</sup> However, since the adoption of the Commission Recommendation of 3 October 2008 on the active inclusion of people excluded from the labour market,<sup>10</sup> these policies are integrated under the name *active inclusion* policies. According to the Commission Recommendation, *active inclusion* policies consist of three pillars: (a) adequate income support; (b) inclusive labour markets; and (c) access to quality services. For the purpose of this section the first two pillars are particularly relevant. The first pillar (adequate income) entails “the individual’s basic right to resources and social assistance sufficient to lead a life that is compatible with human dignity as part of a comprehensive, consistent drive to combat social exclusion”.<sup>11</sup> The first pillar does not guarantee an unconditional right to a social minimum income as the text also refers to the requirement to safeguard “an incentive to seek employment for people whose condition renders them fit for work”.<sup>12</sup> The second pillar (‘inclusive labour markets’) entails the activation of people by both enabling policies and financial incentives. These two pillars of *Active inclusion* policies have remained at the core of EU social policies after the launch of the Europe 2020 Strategy on 3 March 2010, where ‘flagship initiatives’ refer to both increased labour participation and access to social

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<sup>9</sup> Regarding the goal of adequate means of subsistence, see the Council Recommendation 92/441/EEC of 24 June 1992 on common criteria concerning sufficient resources and social assistance in social protection systems (OJ L.245/46).

<sup>10</sup> OJ L 307/11 (2008).

<sup>11</sup> OJ L 307/12 (2008).

<sup>12</sup> OJ L 307/13 (2008).

rights.<sup>13</sup> In addition, the Commission has explicitly acknowledged the adoption of policies of *active inclusion* in the Europe 2020 Strategy.<sup>14</sup>

Notwithstanding that *active inclusion* policies have supplemented the previous focus on employment strategies<sup>15</sup> with a social rights perspective, neither the original Council Recommendation nor the follow up documents refer to the possible adverse consequences of financial incentives for the first pillar (adequate income support).<sup>16</sup> On the contrary, with respect to the first pillar, the follow-up documents argue, in the same vein as the Council Recommendation, that “[t]he level [of minimum income schemes] should be high enough for a decent life and at the same time help people to be motivated and activated to work”.<sup>17</sup> In other words, the level of income support is (also) viewed as an incentive to work, in that it should not be too high (as this encourages inactivity). Also social policy scholars, such as Marchal and van Mechelen (2015),<sup>18</sup> have classified work-related sanctions in minimum income schemes exclusively as an instrument of inclusive labour markets, while ignoring the possible adverse effects these instruments may have on the goal of adequate income support. This is due to the fact that both the European Commission and social policy scholars tend to taken an instrumentalist perspective on work-related sanctions.

Instead, this paper argues that if European social policies intend to take the goal of adequate income support seriously, they should consider all effects of work-related sanctions on the income of recipients of social assistance, including possible adverse effects. Taking a (genuine) social rights perspective on sanction policies, this paper proceeds to examine the extent to which work-related sanctions in social assistance schemes comply with the right to minimum means of subsistence that has been enshrined in various International Treaties, such as Art. 34 (3) of the EU Charter of Fundamental Rights (ECFR);<sup>19</sup> Art. 25 (1) of the

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<sup>13</sup> Communication from the Commission, Europe 2020, A strategy for smart, sustainable and inclusive growth, 3 March 2010, COM (2010) 2020 final.

<sup>14</sup> See Commission Staff Working Document. Social Investment Package. 20 February 2013, SWD (2013) 39 final, pp.4-5.

<sup>15</sup> In particular, since the mid-term review of the Lisbon strategy in 2004.

<sup>16</sup> See the follow up documents of the Council Recommendation: (1) Communication from the Commission. The European platform against poverty and social exclusion: A European framework for social and territorial cohesion, SEC (2010) 1564 final, p.6; (2) Commission Staff Working Document. Social Investment Package. 20 February 2013, SWD (2013) 39 final, p.13; (3) Communication from the Commission. Towards social investment for growth and cohesion, 20 October 2013. COM (2013) 83 final, p.10.

<sup>17</sup> Communication from the Commission. Towards social investment for growth and cohesion, 20 October 2013. COM (2013) 83 final, p.19; also see Commission Staff Working Document. Social investment package, 20 February 2013, SWD (2013) 39 final, p.10.

<sup>18</sup> These authors have have used the concept of *active inclusion* to evaluate activation policies in the context of broader welfare policies of EU Member States.

<sup>19</sup> Art. 34 (3) of the EU Treaty of Fundamental Rights stipulates “in order to combat social exclusion and poverty, the Union recognizes and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national law and practices”.

Universal Declaration of Human Rights;<sup>20</sup> Article 27 (1) of the Convention on the Rights of the Child;<sup>21</sup> Art. 9, Art. 11 (1) and (2) of the International Covenant on Economic, Social and Cultural Rights (ICESR);<sup>22</sup> and Art. 13 (1) European Social Charter (ESC).<sup>23</sup> In addition, following the case law of the European Court of Human Rights, Art. 1 of the first protocol of the European Convention of Human Rights (ECHR)<sup>24</sup> and Art. 8 ECHR<sup>25</sup> indirectly imply the right to minimum means of subsistence.<sup>26</sup>

For the purposes of this paper the social rights enshrined in the ICESR and the ESC are particularly important. Art. 9 ICESCR stipulates the right to social security and Art. 11 (1) ICESCR recognizes, among other things, the right of everyone to an adequate standard of living. According to the general comment to Art. 9 ICESCR, the right to social security also includes the right to social assistance benefits.<sup>27</sup> In its statement of 2015 the supervising body of the ICESCR, the Committee on Economic Social and Cultural Rights (CESCR) declared that basic social security guarantees “constitute the core obligation of States to ensure access to social security by providing, together with adequate access to essential services, a minimum level of benefits to all individuals and families to enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, food and the most basic forms of education”.<sup>28</sup> Hence, the CESCR intends to assure *universal* access to a minimum level of benefits.<sup>29</sup> In addition, the CESCR has argued for a fair and reasonable

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<sup>20</sup> According to Art. 25 (1) UDHR, “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family”.

<sup>21</sup> According to Art. 27 (1) of the Convention on the Rights of the Child, “States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”.

<sup>22</sup> Art. 9 ICESCR stipulates the right to social security. Point 16 of the General Comment to Art. 9 further states that at the expiry of the period of unemployment benefits, the social security system should ensure adequate protection, for example through a system of social assistance (General Comment No. 19, adopted 23 November 2007 at the 39<sup>th</sup> session [doc.no. E/C.12.GC/19]). In case of unemployment, Art. 11(1) ICESCR recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food clothing and housing and to the continuous improvement of living conditions”.

<sup>23</sup> Art. 13 (1) ESC states: “with a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake (1) to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme be granted adequate assistance, and, in case of sickness, the care necessitated by his condition”.

<sup>24</sup> Art. 1 of the first Protocol of ECHR recognizes the right to property. The Case law of the ECtHR shows that this right also applies to social assistance benefits.

<sup>25</sup> According to Art. 8 ECHR, “everyone has the right to respect for his private and family life, his home and his correspondence”. The ECtHR has stated in reference to Art. 8 ECHR that Article 8 “does not merely compel the state to abstain from (...) interference; (...) In addition to the negative obligation to protect the individual against arbitrary action by the public authorities, Art. 8 also contains positive obligations that is the State may also have to act affirmatively to respect the wide range of personal interests” (ECtHR 26 March 1985, X & Y v. the Netherlands, para 31).

<sup>26</sup> However, the practical value of these rights for sanctioned recipients of social assistance will be limited regarding the required balancing of interests (principle of fair balance), and the fact that national states possess a great margin of appreciation in these cases.

<sup>27</sup> According to point 16 of the General Comment to Art. 9 ICESCR, at the expiry of the period of unemployment benefits the social security system should ensure adequate protection, for example through a system of social assistance (General Comment No. 19, adopted 23 November 2007 at the 39<sup>th</sup> session [doc.no. E/C.12.GC/19]).

<sup>28</sup> Statement of the CESCR, 15 April 2015 (E/C.12.2015/1).

<sup>29</sup> Note that this does not imply an *unconditional* access to benefits.

application of work-related conditions. In this regard it has expressed its concerns regarding the imposition of work-related conditions on disadvantaged groups (Tooze, 2007). For example, in a few recent Conclusions, the CESCR urged the State Parties to reconsider “the eligibility criteria for social assistance benefits insofar as they affect the most disadvantaged and marginalized groups”.<sup>30</sup>

Compared to the CESCR, the European Committee on Social Rights (ECSR), which is the supervising body of the ESC, has been more explicit when it comes to work-related conditionality and sanctioning in social assistance benefits. Whereas in the European context the ESC is the key legal instrument regulating social rights (Mikkola, 2010), the remainder of this section considers the extent to which the ESC sets limits to work-related sanctions. The right to social assistance enshrined in Art. 13 ESC is closely related to comparable provisions in other International Treaties. For example, Art. 13 ESC has been an important source for Art. 34 (3) of the ECFR.<sup>31</sup> In addition, on several occasions the ECSR has considered that the ESC should be interpreted in harmony with other rules of International Law of which it forms part.<sup>32</sup> This implies, among other things, that the ECSR interprets Art. 13 (1) in conformity with the minimum core obligations of the ICESCR, such as the right to be free from hunger stated in Art. 11 (2).<sup>33</sup>

In 1969, in its statement on Art. 13 ESC, the ECSR argued that “the Contracting Parties are no longer merely empowered to grant assistance as they think fit; they are under an obligation, which they may be called on in court to honour”.<sup>34</sup> This statement shows that the Contracting Parties ought to take the right to social assistance seriously. Setting the poverty threshold at 50% of the median equivalized income,<sup>35</sup> the ECSR has decided with respect to a great number of European countries, that their social protection systems do not comply with this threshold. In addition, it has imposed three restrictions on the reduction, suspension or termination of the entitlement to social assistance due to a (work-related) sanction:

1. The conditions should be “reasonable and consistent with the aim pursued, that is to say to find a lasting solution to the individual’s difficulties”;

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<sup>30</sup> CESCR Concluding Observations on the combined third to fifth periodic report of Romania, 9 December 2014 (E/C.12/ROU/CO/3-5); CESCR Concluding Observations on the second periodic report of Slovenia, 15 December 2014 (E/C.12/SVN/CO/2).

<sup>31</sup> See the explanations relating to the Charter of Fundamental Rights (OJ 2007/C 303/27).

<sup>32</sup> See for example International Federation of Human Rights Leagues (FIDH) v. France; Complaint no. 14/2003, decision on the merits of 8 September 2004, §26.

<sup>33</sup> CESCR, *General Comment 3, The nature of state obligations (1990)*, UN Doc. E/1991/23, 14 December 1990, par. 10.

<sup>34</sup> ECSR, Conclusions I, Statement of Interpretation of Art. 13 para. 1 of the ESC, 31 May 1969.

<sup>35</sup> This is lower than the poverty threshold set by the European Commission that sets it 60% of the median equivalized income.

2. Reduction, suspension or termination should “not deprive the person concerned of his/her means of subsistence;
3. “[I]t must be possible to appeal against a decision to suspend or reduce assistance”.<sup>36</sup>

With respect to the first point (“reasonable and consistent with the aim pursued”), note that the ECSR does not usually assess whether the work requirements in social assistance regulations are reasonable and consistent with the aim of finding a lasting solution to the individual’s difficulties. However, one can wonder whether all national regulations would stand this test. In a number of national minimum income legislations, then, work conditions seem to have been implemented solely with the aim of making dependence on welfare benefits as unattractive as possible (Paz-Fuchs, 2008; Paz-Fuchs and Eleveld, 2016).

With respect to the second point (“not to deprive the person concerned of his/her means of subsistence”), the ECSR has asked the ratifying states several times to provide additional information in order to assess whether a sanctioned recipient still has access to adequate means of subsistence. For example, in its Conclusions of 2010, the ECSR asked the Dutch government for information in its next report of the details about the regulation of work-related sanctions in the national social assistance legislation.<sup>37</sup> In its Conclusions of 2013, the ECSR notes that the Dutch government has reported that social assistance benefits may be partly or entirely reduced for up to three months if there is some form of culpability.<sup>38</sup> Once the reduction period has elapsed, the municipality must reassess the situation. It is not clear, however, whether the ECSR is satisfied with this report as the Committee has deferred its Conclusion pending some other questions.

In other occasions the ECSR has firmly stated that it does not accept that the application to social assistance benefits are rejected, or that social assistance benefits are withdrawn, because the person concerned has not complied with employment integration schemes, failed to register with the competent employment service, or to accept a job. This was the case, for example, in its Conclusions concerning Luxembourg<sup>39</sup> and Croatia.<sup>40</sup> However, the ECSR seems to condone work-related sanctions in cases where the national legislation provides for some kind of safety net income that replaces social assistance benefits in case a sanction has been imposed. For example, the ECSR asked the Portuguese government to confirm that exceptional short-term benefits of limited amounts covering minimum subsistence expenses are available to people whose benefits have been suspended for not

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<sup>36</sup> Digest of the case law of the European Committee of Social Rights, 1 September 2008, p.98.

<sup>37</sup> ECSR Conclusions, decision of 1 February 2010 (No. 2009/def/NLD/13/1/EN).

<sup>38</sup> ECSR Conclusions, decision of 12 June 2013, session 263 (2013/def/NLD/13/1/EN).

<sup>39</sup> ECSR Conclusions, decision of 1 February 2010 (XIX-2/def/LUX/13/1/EN).

<sup>40</sup> ECSR Conclusions, decision of 4 March 2014, session No. 270 (XX-2/def/HRV/13/1/EN).

accepting a suitable employment offer.<sup>41</sup> In the case of the UK, the ECSR has asked further questions concerning the hardship clauses in the British jobseekers legislation,<sup>42</sup> and in the case of Lithuania the ECSR explicitly accepted the present hardship clauses.<sup>43</sup>

In conclusion, in contrast to the European Commission (and many social policy scholars), international supervising bodies *acknowledge* that (in addition to low levels of social assistance) the imposition of work-related sanctions may leave the (former) recipient of social assistance without sufficient means of subsistence. The ECSR Conclusions suggest that, unless the state has adopted appropriate hardship clauses, work-related sanctions may contravene the right to minimum means of subsistence. The next section takes a closer look at hardship clauses and other instruments that mitigate work-related sanctions.

### **3. Mitigating instruments: discretion, good reasons, reparation and hardship clauses**

The importance of mitigation instruments that apply to recipients of social assistance who fail to comply with activation measures can be illustrated by an example. Suppose that the safety net system in countries A and B are based on social assistance benefits and that, according to the social assistance legislation, the benefits will be reduced 100% for a period of three months, where a recipient commits a work-related fault. Suppose that in both countries a recipient is punished because s/he refuses to participate in an employment programme, and that it is not likely that this recipient will be hired within the next three months because their employment prospects are low. Suppose also that country A has not adopted any mitigation clause. As a result, the income of the sanctioned recipient will probably fall far below poverty rates. By contrast, country B has adopted three important mitigation mechanisms in its social assistance regulations. First, the sanction regulation includes a ‘can’ clause. Hence, the decision-maker has discretionary space to decide whether he applies the sanction after the recipient has committed a fault. Second, country B has adopted reparatory measures, as a result of which the benefits are restored as soon as the welfare recipient fulfils his obligations. Third, country B has adopted a hardship clause, according to which the sanctioned welfare recipient is still able to apply for some allowances to buy food after a sanction has been imposed.

It will be clear that, despite the fact that country B has adopted a similar sanction rule, the effects of the sanction will be mitigated in various ways. First, the sanction may not be imposed because of the ‘can’ clause (discretionary clause), and/or because of the fact that the recipient provides good reasons for his refusal (good reasons clause). In addition, the

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<sup>41</sup> ECSR Conclusions, decision of 12 June 2013, session No. 271 (2013/def/PRT/13/1/EN).

<sup>42</sup> ECSR Conclusions, decision of 12 June 2013, session No. 268 (XX-2/def/GBR/13/1/EN).

<sup>43</sup> ECSR Conclusions, decision of 12 June 2013, session No. 264 (2013/def/LTU/13/1/EN).

sanction may be withdrawn immediately because the recipient changes his mind after s/he has received a sanction and s/he decides to participate in the employment. Finally, where the sanction is not repaired and the decision maker decides to impose the full sanction, the presence of a hardship clause may allow the recipient to buy food during this period. In short, in terms of income support, in all three scenarios, the sanctioned social assistance recipient in country B will be better off compared to the sanctioned recipient in country A.

Hence, as this example shows discretionary clauses, reparatory clauses and hardship clauses may mitigate work-related sanctions in important ways. This section examines these mitigation clauses more closely

Firstly, clauses that allow for discretionary space are important, because these might effectively leave the decision maker “free to make a choice among possible courses of action or inaction” (Davis, 1969:4). These clauses mitigate work-related sanctions, because the decision maker has the power not to apply the sanction that has been regulated in law. As a result, the recipient has at least a chance to be better off. It should be noticed, however, that - from a social rights perspective - the adoption (and the use) of discretionary clauses does not necessarily benefit the recipient of social assistance.

In general, discretionary clauses have gained importance since the emergence of a contractual mode of thinking and regulation in social assistance regimes in European welfare states. Instead of an almost unconditional right to basic social assistance, social rights have been increasingly linked to sanctions-backed behavioural conditions (Ervik *et al.*, 2015; Sol and Westerveld, 2005) and it is up to the decision maker to decide in individual cases which conditions have to be fulfilled, whether the recipient has complied with these conditions and whether and how the recipient who has not complied with the (work-related) conditions should be sanctioned. Research has shown that, as a result of these developments, recipients are increasingly ‘at the mercy of’ the street level bureaucrat (Brodkin, 2011; Lipsky, 1980; Van Berkel, 2011; Van Berkel *et al.*, 2011). Hence, from this perspective, discretionary clauses have reduced instead of improved recipient’s access to basic social rights.

In addition, various scholars have shown how non-legal considerations have affected the ways discretionary space has been used in practice. For example, they have revealed how the decision whether or not to impose a work-related sanction (also) increasingly subject to management goals that are based on efficiency considerations, which in fact ‘nudge’ the decision maker to impose a sanction (Adler, 2013; Caswell and Høbye-Mortensen, 2015; Galligan, 1986; Brodkin, 2011; Brodkin and Marston, 2013; Soss *et al.*, 2011; Van Aerschot, 2011). They have also argued that the prevailing norm that “the recipient has to do

something in return for his benefits”, may affect the ‘epistemic discretion’, or the kind of reasoning in the exercise of discretionary power (Nilssen, 2015, p.74, referring to Molander *et al.*, 2012, p.74), inciting the the decision maker to impose a work-related sanction in case of non-compliance much earlier. However, notwithstanding these reservations, a discretionary clause with respect to the imposition of a work-related sanction should be perceived as a mitigating clause, which leaves room to the decision maker not to impose the sanction.

In addition to discretionary clauses, a national social assistance scheme may have adopted good reasons clauses, which are particularly relevant in the absence of an explicit discretionary clause. A good reason clause stipulates that the sanction is not imposed where there are good reasons for the default. Hence, in the absence of a discretionary sanction clause, the presence of a good reasons clause still leaves some, albeit less, discretionary space for the decision maker.

The clause that the benefits will be paid after the fault has been repaired (e.g. the recipient agrees to participate in an employment programme) is an example of a reparatory clause. Hence, normally, a reparation clause ‘softens’ the sanction. However, this will not be the case in all situations. I will briefly discuss three of these situations wherein which a reparatory clause will not necessarily benefit the recipient.

First, note that the decision maker will mostly enjoy some scope of discretion whether and how to apply the reparation clause: in other words, s/he may also ignore the possibility of repair. In that case a recipient is probably better off in a system that has stipulated a fixed (short) period of the reduction (e.g. one month), compared to a system that contains a reparatory clause without stipulating a maximum length of the reduction (e.g. the benefits are restored as soon as the recipient fulfils his obligations). Then, where the recipient in the first system persists in his fault, the decision maker is at least forced to reconsider the sanction after a month.

Second, the presence of reparatory clauses may prevent the applicability of Art. 6 ECHR, which protects the right to a fair trial.<sup>44</sup> As a result the managerial power will increase at the cost of the legal protection of social rights (Adler, 2013; Van Aerschot, 2011). This point can be illustrated in the following way. Suppose that in country B (that has adopted a reparatory clause), a sanctioned recipient argues that his benefits should be restored at 100% since he now fulfils the obligations. Suppose that the decision maker does not fully agree with the recipient and refuses to withdraw the sanction. In this situation the recipient does not enjoy the right to a fair trial of 6 ECHR, whereas he would have been protected by this provision

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<sup>44</sup> Art. 6 ECHR only applies to punitive sanctions.



where the reparatory clause had been absent. Finally, the presence of a reparation clause may have no practical effect whatsoever, because the recipient is not aware of the possibility of repair.

Yet, notwithstanding these three reservations, it could be argued that, generally speaking, reparation clauses reduce the harshness of a sanction in important ways. This point has been insufficiently recognized in current studies, as a result of which quite different sanction clauses have been assessed in similar ways. For example, in a recent OECD study on the eligibility criteria for unemployment benefits, the sanctions for Romania were valued higher (2 points) compared to the Netherlands (1 point), indicating that Romania has adopted harsher sanctions. However, this valuation did not do justice to the fact that, in Romania, benefits are immediately restored after re-application, whereas in the Netherlands benefits are cut for a fixed period of four weeks (Langenbucher, 2015).

The hardship clause constitutes a fourth type of mitigation clauses. These clauses that prevent hardship for the sanctioned recipient, should be distinguished from clauses that exempt a legally defined group of recipients from work-related obligations, such as single parents, elder recipients, etc. (i.e. 'exemption clauses'). Hardship clauses often apply to recipients with dependent children and they can be regulated at either the national or regional level. In both cases the application of hardship clauses presupposes a broad margin of discretion for the decision maker. For example, the Irish social assistance legislation has adopted a provision stipulating that where a claimant with a family loses their payment (due to a sanction), the qualified adult can apply for a supplementary welfare payment on their own behalf and that of the children. It is up to the decision maker to decide whether these supplementary welfare payments are granted.

Finally, social assistance regimes do not need to have adopted reparatory, discretionary, hardship or good reasons clauses in order to mitigate the effects of a sanction. Mitigation of a sanction can also occur in a somewhat unintended way, namely because of the way the social assistance benefits are composed. For example, in social assistance regimes that contain distinct components for children, paternity, heating and rent, a work-related sanction does not need to affect all components; this depends on the design of the system. Obviously, in national systems where a work-related sanction does not affect all components, such as the sanctioning regimes in Germany and the UK, a sanctioned single parent with children will be better off compared to a system where all social assistance components are affected, such as the Dutch system (Eleveld, 2014).

## **4. Data and methods**

This section explains how the countries were selected (4.1). Consequently, it goes on to provide some country specific remarks with respect to their system of social assistance benefits (4.2) and an explanation of the questionnaire (4.3). The last section (4.4) explains the construction of the sanction indicator and the mitigation indicator.

### **4.1 The selection of the countries**

The questionnaires completed by legal and social policy specialists for 25 European countries (see appendix 2) were the main source for this report. The goal of this project was to investigate the level of sanctioning in all EU Member States, the European Economic Area<sup>45</sup> and Switzerland. However, during the term of the research, it was not possible to find legal specialists for Latvia and Iceland. In addition, Malta and Hungary were excluded, because the available data were not clear enough for the aim of this study. Cyprus was also excluded, because at the time of the research the new social assistance legislation Law had only recently been implemented and there were no guidelines, internal decrees and/or jurisprudence in place for answering the questions in a satisfying way. Finally, Greece was excluded because it did not regulate social assistance benefits for able-bodied people.

As a result the country selection includes 23 EU Member States (AT, BE, BU, CZ, DK, ES, EE, FI, FR, GE, HG, IE, IT, LT, LU, NL, PL, PT, RO, SI, SK, SE, UK), one country from the European Economic Area (NO) and Switzerland (CH).

### **4.2 Some country specific remarks concerning non-contributory social assistance benefits**

In most countries social assistance benefits are regulated at the national level. However, in a few countries, such as Austria and Switzerland, social assistance benefits are entirely regulated at the local level. For Austria, therefore, the regulations of the city of Vienna and for Switzerland the regulations for the Canton of Zürich were examined. In addition, there were some countries that (partly) regulate social assistance benefits at the local level. For example, in Lithuania hardship clauses are regulated at the local level. Therefore, for this country the regulations for Vilnius were also examined. In Romania, social assistance benefits are partly regulated at the municipal level in the form of emergency benefits.<sup>46</sup> However, regarding the (very) temporary character of these benefits, they were not included. In Italy social assistance benefits are partly regulated at the regional level. The regulations of the municipal of Milan were studied, but it was decided not to include it because it only

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<sup>45</sup> Except for Lichtenstein.

<sup>46</sup> Emergency benefits cover accidents, health issues, home depreciation due to calamities or other unforeseen events. These benefits will be sanctioned in case the recipient does not fulfil work-related obligations.

offers one relatively small sum for the unemployed who participate for six months in an activation project.<sup>47</sup>

Some countries have adopted rather limited social assistance benefits. Firstly, in Spain social assistance is regulated at the regional level. The regulations of Catalonia, which, according to the ECSR, has adopted one of the most extensive social assistance regimes in the country, were examined. However, since the reform of 2011 this region has limited social assistance benefits (PRIMI benefits) to people with special and additional needs. Therefore, it was decided to consider the national unemployment benefits in Spain. Workers are eligible for unemployment benefits where they have contributed for at least 180 days. The duration of these benefits is limited. Only claimants older than 52 years may receive benefits until retirement. This shows that in Spain there are important gaps in the social assistance scheme, particularly with respect to first time job seekers and long-term unemployed under 52 years.

Like Spain, three other investigated states have adopted rather limited social assistance schemes for able-bodied people. In Italy people are only eligible for social assistance benefits when they are unemployed and at least one member of the household is under the age of 18, or over 55 and does not (yet) qualify for a retirement scheme. In Bulgaria able-bodied people are only eligible for social assistance benefits after a waiting period of six months; and in Croatia able-bodied people are eligible for social assistance benefits for a maximum period of three years. People can only re-apply for social assistance benefits after a period of three months.

### **4.3 The questionnaire**

The completed questionnaires were the main source for this report. The country specialists were asked to fill out the questionnaires for the situation at 1 January 2015.<sup>48</sup> With respect to some countries, some additional research was conducted by examining the (translated) text of the relevant legal regulations. This was the case with the Czech Republic, France, Ireland, Luxembourg, Poland and Switzerland.

The questionnaire contained questions on financial sanctions that, according to the national or regional legislation on non-contributory social assistance, can be imposed on recipients of social assistance who fail to fulfil one or more of the work-related requirements:

- (1) register with an employment office;

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<sup>47</sup> See *Patti per il riscatto sociale (Milan) (Pacts for the advancement of social conditions)*.

<sup>48</sup> With the exception of Italy where we also considered some important legislative changes in 2015.

- (2) sign an integration or insertion contract;
- (3) comply with job research requirement;
- (4) participate in a job community programme;
- (5) participate in a training programme;
- (6) participate in an employment programme;
- (7) other.

This paper refers to a work-related fault where the recipient of social assistance fails to fulfil one of these requirements. Initially the questionnaire distinguished between the 'termination', 'suspension' and 'reduction' of the benefits. However, whereas during the research this term appeared to be multi-interpretable, the category of 'suspension' was replaced by 'termination' or a 'reduction of 100%', dependent on the country specific meaning of 'suspension'. 'Termination' means that the benefits are withdrawn and that the former recipient has to re-apply for the benefits. A 'reduction of 100%' means that the recipient does not receive his or her social assistance benefits for a specific period. However, in contrast to 'termination', the recipient does not have to re-apply for the benefits.

#### **4.4 The creation of a sanction indicator and mitigation indicator**

This section explains how a quantifiable sanction indicator was established.

##### **4.4.1 The sanction indicator excluding mitigation instruments**

In order to construct the sanction indicator excluding mitigation instruments, data from the questionnaire were categorized. Based on this categorization, I was able to formulate the most important indicators characterizing the variety of sanctions. As shown in Table 2, various criteria were taken into account, including the number of work-related behaviours that are sanctioned, recidivism, the period of reduced benefits payments or termination, the percentage of the reduction of the benefits, and the flexibility of the periods and percentages of reduction. In order to calculate a sanction indicator for each country, each indicator counted for one point. Note that some of these indicators already imply the presence of a reparatory clause.<sup>49</sup>

In some countries different sanctions apply, depending on the kind of work-related fault.<sup>50</sup> For example, in Denmark, the benefits will be reduced for the days the recipient failed to participate in one of the prescribed activities.<sup>51</sup> The benefits are instead reduced by 3/20 of the monthly payment where the recipient ceases an educational activity without good

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<sup>49</sup> Namely, the distinction that is made between fixed periods and maximum periods.

<sup>50</sup> This was the case for Bulgaria, Denmark, Italy, Lithuania, the Netherlands, Slovakia, Spain and the UK.

<sup>51</sup> See Act on Active Social Policy, par. 36-38.

reason;<sup>52</sup> or if he rejects an employment activity, the benefits may be terminated immediately.<sup>53</sup> Regarding these differences, it was decided to establish two sanction indicators: one for work-related fault(s) as a result of which the lowest set of sanctions were imposed (low-sanction indicator), and one for work-related fault(s) as a result of which the highest set of sanctions were imposed (high-sanction indicator).

**Table 2: Elements of the sanction indicator excluding mitigation clauses**

<ol style="list-style-type: none"> <li>1. Sanctions are imposed on five or more ALMP related faults.</li> <li>2. Termination or a reduction of 100% after a first fault for a fixed period of six months and more.</li> <li>3. Termination or a reduction of 100% after a first, second or third fault for a fixed period of 12 months and more.</li> <li>4. Termination or a reduction of 100% after a first fault for a fixed period.</li> <li>5. Termination or a reduction of 100% after a first, second or third fault with and/or without a fixed time period (i.e. immediate reparation of the fault is possible) and excluding those countries who have adopted a discretionary clause with regard to the percentage of the sanction (i.e. up to 100%).</li> <li>6. Termination or a reduction of 100% after a first, second or third fault, with and/or without a fixed time period (i.e. immediate reparation of the fault is possible) and including those countries who have adopted a discretionary clause with regard to the percentage of the sanction (i.e. up to 100%).</li> <li>7. 100% reduction, fixed period of one month or more after a first, second or third fault.</li> <li>8. Termination or reduction of more than 50% (i.e. 51% and more) after a first fault, excluding those countries who have adopted a discretionary clause with regard to the percentage of the sanction (i.e. up to 100%).</li> <li>9. Termination or reduction of more than 50% (i.e. 51% and more) after a first, second or third fault, including those countries who have adopted a discretionary clause with regard to the percentage of the sanction (i.e. up to 100%).</li> </ol>
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**Source: Constructed by author**

#### **4.4.2 The mitigation indicator (as part of the sanction indicator)**

For the creation of the mitigation indicator, the presence of reparatory clauses, hardship clauses, discretionary clauses and good reasons clauses were examined. In addition, which part of the social assistance benefits were sanctioned were also examined. The absence of reparatory clauses, hardship clauses and discretionary clauses all counted for one point. Where the national legislation contained a discretionary clause (i.e. a ‘can’ clause), it was assumed that the decision on the imposition of a sanction depended, among other things, on the fact whether the recipient had given good reasons not to fulfil the work-related requirements. Where national legislation did not contain a discretionary clause (i.e. 1 point), whether the legislation contained a good reasons clause was checked. If that was the case, the mitigation indicator was reduced by 0.5 points.

The elements of the mitigation indicator are presented in Table 3.

<sup>52</sup> See Act on Active Social Policy, par. 40.

<sup>53</sup> See Act on Active Social Policy, par. 41.

**Table 3: Elements of the mitigation indicator**

- |  |
|--|
| <ol style="list-style-type: none"><li>1. The sanction clause does not contain a reparatory measure;</li><li>2. The sanction clause does not contain a hardship measure;</li><li>3. There is no discretionary space with respect to the decision whether a sanction will be imposed and there is no good reason clause;</li><li>4. There is no discretionary space with respect to the decision whether a sanction will be imposed, but the sanction clause contains a good reasons clause (i.e. the sanction is not imposed where there is a good reason).</li></ol> |
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**Source: Constructed by author**

The assessment of discretionary space is in need of some additional explanation. The wordings in the legal text were decisive here. For example, where the sanction clause included a sentence such as a sanction *can be* imposed, the clause was interpreted as including discretionary space. By contrast, where the sanction clause included a sentence that a sanction *must be* imposed, or that a sanction *is* imposed, the clause was interpreted as not containing discretionary space. Note that the relevant question was whether the decision maker *formally*, and not *in practice*, enjoys discretionary space. As mentioned in the previous section, in practice things may be different, even where the relevant regulation apparently leaves no discretionary scope, stipulating that a sanction *has to* be imposed. For example, one of the Bulgarian specialists reported that despite the fact that formally the rules do not leave discretionary space, empirical research shows that these rules are not strictly applied.

#### **4.4.3 The sanction indicator including mitigation**

The comprehensive sanction indicator was calculated for high-sanctions and low-sanctions by counting the sanction indicator section of Table 2 and the mitigation indicator of Table 3, resulting in a sanction indicator consisting of 14 elements with a maximum of 13 points.

#### **4.4.4 The number of components sanctioned**

The questionnaire also contained questions on the composition of the social assistance benefits. Where the social assistance benefits consisted of different components, it was asked whether one of these components (for children, paternity, rent or heating) was sanctioned where a work-related sanction was imposed. Regarding their distinct nature, these results were not included in the sanction indicator.

### **5. Results and analyses**

Section 5.1 provides an overview of the different kind of work-related sanctions in the social assistance legislations in 25 European countries. Section 5.2 shows which mitigation mechanisms are adopted in each country. Based on these data, Section 5.3 constructs a high-

sanction indicator and a low-sanction indicator for each of the 25 European countries. Section 5.4 calculates and analyses the correlation between the high-sanction indicator, excluding mitigation clauses, and the mitigation indicator. Section 5.5 calculates and analyses the correlation between the high-sanction indicator and the unemployment rate. Finally, Section 5.6 calculates and analyses the relationship between the high-sanction indicator and the EU at-risk-of-poverty or social exclusion indicator.

### **5.1 The period of the reduced payments or termination and the percentage of the reduction**

The outcome of the questionnaire shows that all European states have adopted at least five out of six work-related sanctions in their social assistance legislation. The only exceptions are Bulgaria and Lithuania. These countries have adopted respectively four and two work-related sanctions.

Table 4 provides an overview of the kind of work-related sanctions that are imposed on recipients who fail to fulfil one of the six work-related requirements. In most countries different work-related sanctions apply depending on the kind of work-related fault that has been committed and on the extent of recidivism (i.e. a first, second or third fault).

The table shows that some countries have adopted a fixed period during which social assistance benefits are terminated (BG, CZ, EE, HR, IE, IT, LT, LU, PT and SI), varying between two months (IT) and two years (PT). In these countries social assistance benefits can only be successfully re-applied after this fixed termination period. Those countries that have not adopted a fixed period for termination use a reparation clause that enables the recipients to successfully re-apply for the benefits as soon as they fulfil the (work-related) conditions. Table 4 further shows that where benefits are reduced instead of terminated the percentage of reduction may vary between 0 and 100%. In addition, this reduction may be fixed or variable.<sup>54</sup> In Finland, Norway Sweden and Switzerland (canton of Zurich), benefits, are reduced on the condition that they are set at a decent minimum level. The length of the period during which the benefits are reduced varies between 21 days (IE) and 156 weeks (UK). Some countries have not adopted a maximum period for the reduction of benefits (AT, CH, EE, NO, PL, SE). This implies that the benefits will be restored to the normal level as soon as the recipient fulfils the work-related obligations.

#### **Table 4: The period of the reduced benefits or termination and the percentage of the reduction**

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<sup>54</sup> Note in this respect that the sanction indicator distinguishes between, on the one hand sanction regimes that apply a fixed sanction of 100% or termination, and on the other hand sanction regimes that apply a variable sanction up to 100% (see Table 1).

<b>Country</b>	<b>Termination</b>	<b>Fixed period</b>	<b>Number of faults</b>	<b>Reduction</b>	<b>Percentage, length and number of faults</b>
AT	No	-		yes	0-50%, no minimum or maximum length. After repeated fault, 50-100%, no minimum or maximum length.
BE	No	-		Yes	0-100% for maximum one month. After repeated fault, 100% for maximum three months.
BG	Yes	1 year	After a first fault.	Yes	100% for two months. After a second fault, 100% for two years. <sup>55</sup>
CH	No	-		Yes	15%, no maximum length. After repeated fault, 15% or more, on the condition that the benefits are set at a decent minimum level, for a maximum 12 months.
CZ	Yes	3 months	After a first fault.	No	
DE	Yes	-	After a third fault.	Yes	30% for three months. After a second fault, 60% for three months.
DK	Yes			Yes	15% for one month or 100% no minimum or maximum length.
EE	Yes	90 days	After a first fault.	Yes	100%, no minimum or maximum length after a second fault. <sup>56</sup>
ES	Yes	No		Yes	100% for one month. After second fault, 100% for three months. After a third fault, 100% for six months. <sup>57</sup>
FI	No	-		Yes	0-20% for maximum two months. After repeated fault, 0-40% for two months. The reduction can only be made if it will not endanger a living essential in providing security needed for a life of human dignity.
FR	Yes	No		Yes	80% for 1-3 months. After a repeated fault, 100% for 1-4 months.
HR	Yes	6 months	After a first fault.	No	
IE	yes	9 weeks	After a second fault.	Yes	50% for 21 days after a first fault.
IT	Yes	2 months	After a first, second or third fault.	Yes	25% for one month after a first fault. 100% for one month after a second fault. <sup>58</sup>
LT	Yes	6 months	After a first fault.	Yes	100% no minimum or maximum length. <sup>59</sup>
LU	yes	No - 12 months	Termination after a second fault. Termination for a fixed period of 12 months after third fault.	No	
NL	No	-		yes	Variable percentage no minimum or maximum percentage or 100% for maximum one month. After repeated faults, 100% for maximum three months. <sup>60</sup>
NO	Yes	No		Yes	Variable up to a decent minimum level, no maximum

<sup>55</sup> Whether the benefits are terminated for one year or reduced depends on the type of work-related fault that is committed.

<sup>56</sup> See note 54.

<sup>57</sup> See note 54.

<sup>58</sup> See note 54.

<sup>59</sup> See note 54.

<sup>60</sup> See note 54.



					length.
PL	Yes	No		Yes	0-100%, no minimum or maximum length.
PT	Yes	2 years	After a first fault.	No	
RO	Yes	No	After second fault	Yes	100% for maximum three months.
SI	Yes	6 months	After a first fault.	No	
SK	No	-		Yes	100% for two months. After repeated fault, 50% for maximum 10 subsequent months.
SE	Yes	No	After a first fault, but up to a decent minimum level.	No	
UK	No	No		Yes	100% for 4 or 13 weeks. After a second fault, 100 % for 13 or 26 weeks. After a third fault, 100% for 13 or 156 weeks.

**Source: Constructed by author**

## 5.2 Mitigation mechanisms

Table 5 presents five different mitigation mechanisms in the national legislations: discretionary clauses (DS), good reasons clauses (GRC), reparatory measures (RM), hardship clauses (HS), and the number of components sanctioned (CS). If we consider only the DS, GRC, RM and HS, we see that most countries have adopted at least one of these mitigation clauses. Only Bulgaria, Croatia, Portugal and Slovakia have not adopted any of these clauses. On the other hand, some countries have adopted all four mitigation clauses, namely Finland, Ireland, Norway, Poland, Sweden and Switzerland.

**Table 5: Discretionary space (DS), good reasons clause (GRC), reparatory measures (RM) hardship clauses (HS) and number of components sanctioned**

	<b>DS</b>	<b>GRC</b>	<b>RM</b>	<b>HS</b>	<b>Components not sanctioned</b>
AT	-. <sup>61</sup>	+	+	-	Children, rent and heating
BE	+	+	-	+	-
BG	-	-	-	-	-
CH	+	+	+	+	-
CZ	-	+	-	+	Children
DE	-	+	-. <sup>62</sup>	+	Paternity, children, rent and heating
DK	-	+	+. <sup>63</sup>	-	-
EE	-	+	-	-	-
ES	+. <sup>64</sup>	+	-	-	-
FI	+	+	+	+	Children, rent and partner
FR	+. <sup>65</sup>	+	-	+	Children and partner <sup>66</sup>
HR	-	-	-	-	(only termination)
IE	+	+	+	+	Rent and heating
IT	-	+	-	-	-
LT	-	+	+. <sup>67</sup>	-	Heating
LU	+	+	+. <sup>68</sup>	-	(only termination)
NL	-	+. <sup>69</sup>	+	+	-. <sup>70</sup>
NO	+	+	+	+	-
PL	+	+	+	+	-
PT	-	-	-	-	(only termination)
RO	-	-	+	-	Heating
SE	+	+	+	+	-

<sup>61</sup> According to the regulation in Vienna, benefits *are to be* reduced in steps down to 50%, in case of persistent refusal a further reduction down 100% *is possible*. This clause conveys both discretionary and non-discretionary elements. I have interpreted it as non-discretionary.

<sup>62</sup> In Germany a reparatory clause applies only after the third fault. In that case the benefits will not be terminated but (like the second fault) reduced with 60%. Whereas no reparatory clause applies after the first or second fault I have scored the legislation as not containing reparatory clauses.

<sup>63</sup> In Denmark there are different kinds of sanctions, dependent on the kind of fault that is committed. There is no possibility for reparation where a mild sanction applies (i.e. more or less 15% reduction). Also see section 4.4.1.

<sup>64</sup> In cases of reduction there exists a wide discretion. In cases of termination there is no discretion. We look here at reduction.

<sup>65</sup> In France, the decision maker only has discretionary space with respect to the imposition after the first and second fault. After the third fault (which results in termination) there is no discretion.

<sup>66</sup> In France, all components are sanctioned. However, benefits are only sanctioned for 50% where the household consists of more than one person.

<sup>67</sup> In Lithuania there are only reparatory measures with respect to the first fault, but not with respect to repeated faults.

<sup>68</sup> In Luxemburg there are only reparatory measures with respect to the first fault, but not with respect to repeated faults.

<sup>69</sup> In the Netherlands a sanction will not be imposed when the recipient is without any blame.

<sup>70</sup> Although it must be noted that since the legislative change of January 2015, the child component that was included in the benefits for single parents is conferred to other income related (tax) benefits. As a result, the single parent whose social assistance benefits are sanctioned will now save more benefits compared to the period before 2015.

SI	-	+	-	-	-
SK	-	-	-	-	Children and partner
UK	-	+	-	+	Children and rent

**Source: Constructed by author**

In addition to mitigation clauses, the sanction can also be mitigated because of the specific construction of the social assistance benefits system. For this analysis only the social assistance legislation in appendix 1 was considered. Table 5 shows that in a number of countries not all components of social assistance benefits are sanctioned ((AT, CZ, DE, FI, FR, IE, LT, RO, SK and UK). In some countries at least three components were not sanctioned (AT, DE, FI). However, it should be noticed that where social assistance benefits are terminated or where all components have been sanctioned (for 100%), the recipient may still be entitled to some other form of public benefits which are available to all inhabitants unrelated to their income, such as child benefits or which also available to the working poor, such as subsidies for covering rent costs or income related child benefits.

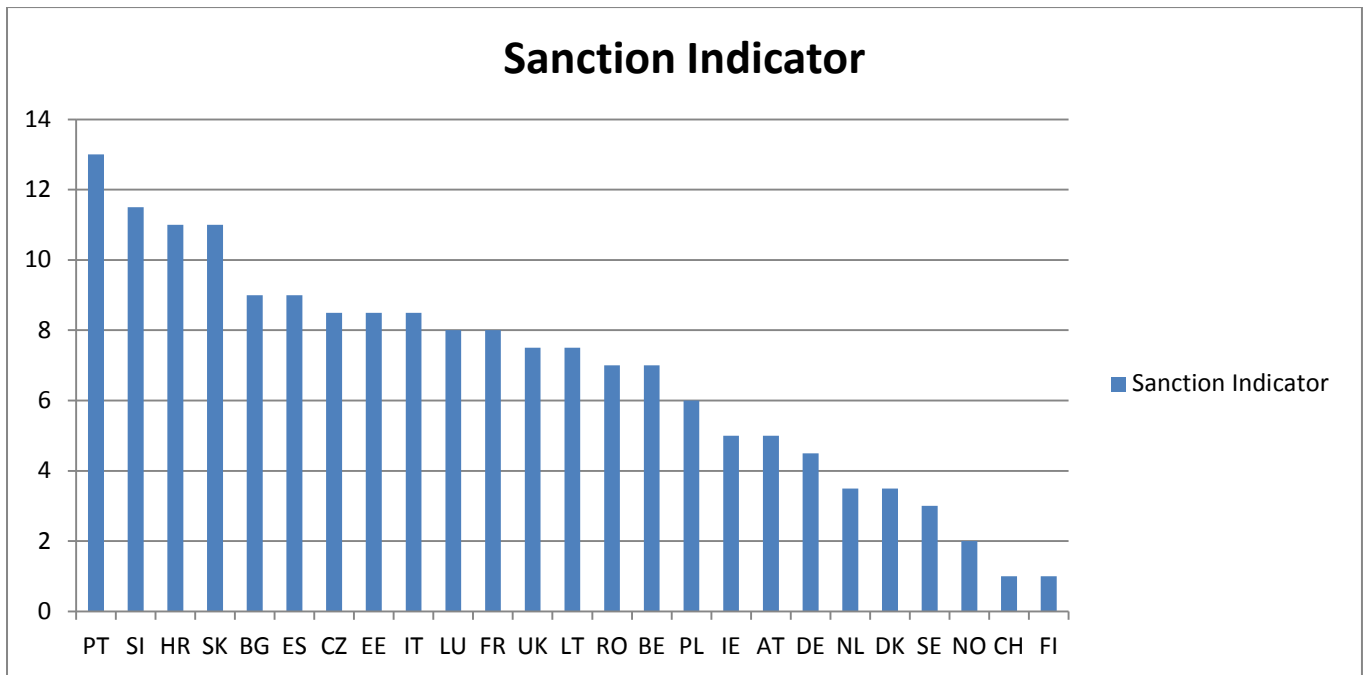
### **5.3 The sanction indicator including the mitigation indicator**

Whereas the completed questionnaires showed that in some countries different sanction regimes applied, dependent on the kind of work-related fault that had been committed, we decided to construct two different sanction indicators. One for the highest sanction regime (high-sanction indicator) and one for the lowest sanction regime (low-sanction indicator). Figure 1 presents the sanction indicator, including the mitigation indicator, for the low-sanctions. Figure 2 presents the sanction indicator, including the mitigation indicator, for the high-sanctions. A comparison of both figures reveals that there are no large differences between the sanction indicator for the low-sanctions and that for the high-sanctions, with the exception of the ranking of some countries. For example, Denmark and the Netherlands score remarkably higher on the list of the high-sanction indicators compared to the list of the low-sanction indicators.

Figure 1 and 2 show that the ranking on the list of the low-sanction indicator and the high-sanction indicator is to some extent related to the welfare state type (Esping Anderson, 1990; Fenger, 2007; Ferragina and Seeleib-Kaiser, 2011). The post-Communist European type (Fenger, 2007) and the Mediterranean welfare state type<sup>71</sup> score relatively high on both lists. Countries that rank 1-6 on these lists all belong to this region. On the other hand, the social-democratic welfare state type and the conservative welfare state type rank relatively low: the countries that rank 20-25 on both lists all belong to these groups. The countries ranking

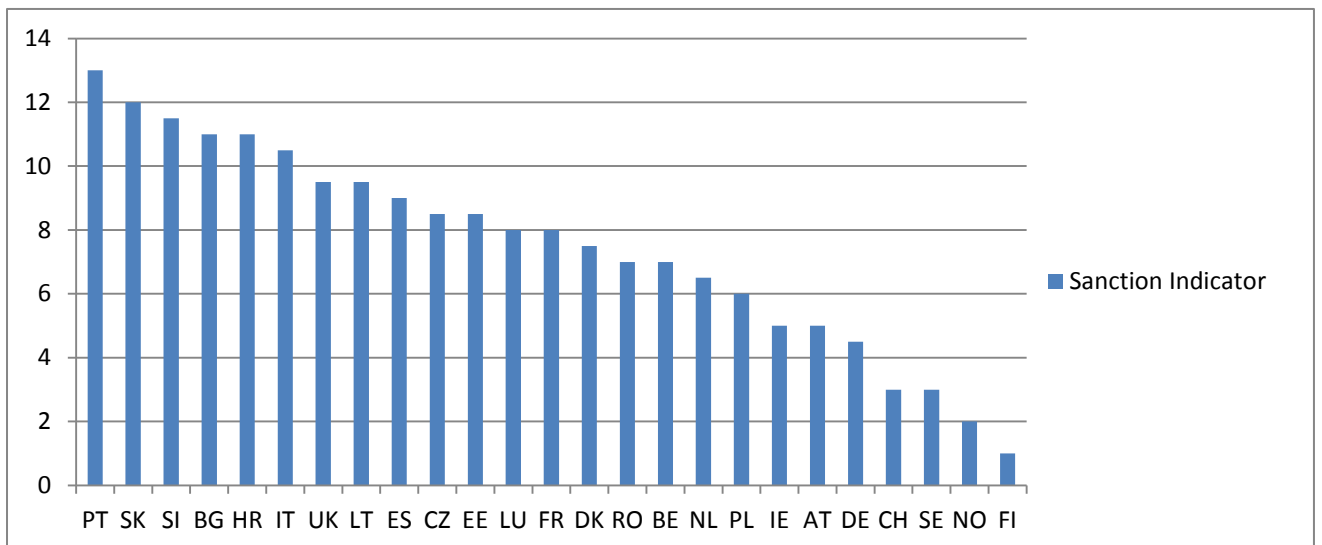
<sup>71</sup> Some categorize the Mediterranean welfare state type as a sub-category of the conservative welfare state type (Ferraginea and Seeleib Kaiser, 2011). However, following, among others Bonoli (1997) and Castles and Obinger (2008), this paper distinguishes the Mediterranean welfare state type as a separate type.

between 7 and 18 belong to different regions and welfare state types (including the former USSR type, see Fenger, 2007) except for the social-democratic welfare state type: on the low-sanction indicator list the (four) social-democratic welfare state types rank between 21-25.



**Figure 1: Sanction Indicator including mitigation and Mitigation Indicator (low-sanctions)**

**Source:** Constructed by author



**Figure 2: Sanction Indicator including mitigation and Mitigation Indicator (high-sanctions)**

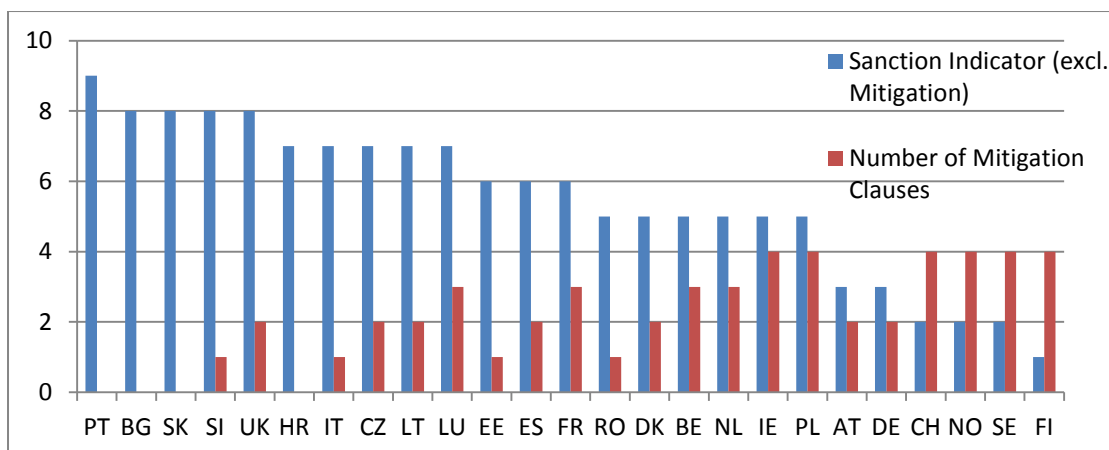
**Source:** Constructed by author

#### **5.4 The correlation between the high-sanction indicator section and the mitigation indicator**

Because a high-sanction has a stronger effect on the income of recipients of social assistance compared to a low-sanction, this section focuses on the high-sanction indicator. In order to compare the presence of mitigation clauses with the level of sanctioning, a comparison was made between the high-sanction indicator section (i.e. excluding the mitigation clauses) with the mitigation indicator.

Figure 3 presents the high-sanction indicator section (i.e. excluding the mitigation clauses) together with the mitigation indicator for mitigation clauses only. This figure shows that there is not much difference between the ranking of the high-sanction indicator including the mitigation clauses and the high-sanction indicator section. More importantly, this figure reveals that a higher ranking on the sanction indicator index corresponds with relatively fewer mitigation clauses (i.e. reparatory clause, discretionary clause, good reasons clause and a hardship clause). For example, the three countries that rank highest on the list of the high-sanction indicator (PT, BG and SK) have not adopted any mitigation clause. This is confirmed by the Spearman correlation co-efficient (see Table 6), which shows a high negative correlation between the high-sanction indicator and the number of mitigation clauses (-0.742). By contrast, the countries that rank lowest on the list of the high-sanction indicator (FI, NO, SE and CH) have adopted all four mitigation clauses. Moreover, these countries have regulated that benefits, are only reduced on the condition that they are set at a decent minimum level (see Table 4 and Section 5.1).

The high correlation between the sanction indicator and the number of mitigation clauses can partly be explained by the fact that the sanction indicator by itself includes reparatory clauses (see Section 3.4.1). For example, where a country has adopted a work-related sanction that terminates benefits without the possibility of reparation (see for example Portugal), this country scores more points for the sanction indicator compared to a country that has adopted a work-related sanction that terminates or reduces the benefits by 100%, and offers the possibility of repair (see for example France). Therefore, the Spearman correlation between the high-sanction indicator section and the presence of all mitigation clauses was also calculated, except for the reparatory clause. In this case there still exists a moderate negative correlation (-0.639).



**Figure 3: high-sanction indicator excluding mitigation and number of mitigation clauses**

**Source:** Constructed by author

**Table 6: High-sanction indicator (excluding mitigation indicator): Spearman correlation coefficients for the number of mitigation clauses**

	Number of mitigation clauses	Number of mitigation clauses excl. reparatory clause
Spearman correlation	0.742	-0.639
Significant at	0.000	0.001
Number of observations	25	25

**Source:** Constructed by author

### 5.5 The correlation between the high-sanction indicator and the unemployment rate

Table 6 indicates a moderate Spearman correlation between the high-sanction indicator and the rate of unemployment in 2014 (0.528). Figure 5 shows that Spain is an outlier. With Spain omitted, the correlation remains almost the same (0.556). In addition, Table 6 indicates a moderate Spearman correlation between the (high-) sanction indicator and rate of long-term unemployment in 2014 (0.671). The table shows a high correlation when we leave out the two outliers, Spain and Ireland (0.768) (see Figure 6).

Based on Figure 4 we can distinguish three groups of countries:

The first group of countries have adopted harsh work-related sanctions in their social assistance system and have relative high long-term unemployment rates (BG, ES,<sup>72</sup> HR, IT, PT, SI and SK).

The second group of countries is a large intermediate group which has adopted sanctions that compared to other sanctioning systems cannot be classified as harsh sanctions and which unemployment rates are -compared to the other countries- not specifically high or low (AT, BE, CZ, DE, DK, FR, EE, IE, LT, LU, NL, PL, RO).

The third group consists of countries that have adopted mild sanctions and that have relative low unemployment rates. (FI, NO, SE).

### **5.6 The correlation between the high-sanction indicator and the at-risk-of-poverty or social exclusion indicator**

In order to monitor progress towards the targets of the Europe 2020 Strategy, which as we saw in Section 2 also includes policies of *active inclusion*, the EU Council of Ministers agreed on an “at-risk-of poverty or social exclusion indicator”. This indicator consists of three sub-indicators that are derived from EU Statistics on Income and Living conditions data. The ‘at-risk-of-poverty or social exclusion indicator’ includes people who are at least in one of the three sub-categories. These sub-categories are:

- (1) A relative component: the *at-risk-of-poverty rate* or monetary poverty. People at risk-of-poverty have an equivalized disposable income below the risk-of-poverty threshold, set at 60% of the national median equivalized disposable income (after social transfers);
- (2) An absolute component: *material deprivation*. People who suffer from *severe material* experience at least four out of the nine following deprivations items. They cannot afford: to pay rent or utility bills; keep home adequately warm; face unexpected expenses; eat meat, fish or a protein equivalent every second day; a week holiday away from home; a car; a washing machine; a colour TV; or a telephone;
- (3) An exclusion of labour market component: severe low work intensity. People living in households with very low work intensity are those aged 0-59 living in households where adults worked less than 20% of their total work potential during the past year.<sup>73</sup>

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<sup>72</sup> Spain scores lower on the sanction indicator list compared to the other countries of this group. However the positioning of Spain in this group can be justified because of its characteristics (see section 4.2) and because of the very high long-term unemployment rates.

<sup>73</sup> For further information, see Eurostat (2013).

Note that of these three elements, the indicator 'severe material deprivation' is closest related to the threshold of basic means of subsistence, as it refers to absolute poverty. Instead, the indicator 'at-risk-of-poverty rate' refers to relative poverty. It should be mentioned that the indicator 'severe low work intensity' is less relevant, because in addition to the number of unemployed people, it can also refer to other people such as those who are disabled for work (and perhaps receive disability benefits).

Table 7 indicates a moderate positive Spearman correlation between the high-sanction indicator and the broad at-risk-of poverty or social exclusion indicator (0.509). We find a low Spearman correlation between the (high-) sanction indicator and the percentage of people living in a household with very low work intensity (0.287). This correlation is not significant. We find a significant, but also low correlation between the high-sanction indicator and the percentage of people at risk of poverty (0.411). However, we find a moderate-high Spearman correlation between the high-sanction indicator and the percentage of people who are severely materially deprived (0.691). If we leave out the outliers, Spain and Ireland (see Figure 5), the correlation increases a little (0.704).

Based on Figure 5 we can again distinguish three groups of countries:

The first group of countries consist of countries that have adopted relatively harsh work-related sanctions and that have a relative high percentage of severely material deprived people (BG, HR, IT, PT, SI, SK and UK).

The second group of countries is a large intermediate group which has adopted sanctions that, compared to other sanctioning systems, cannot be classified as harsh sanctions and which percentage of severely material deprived people are -compared to the other countries- not specifically high or low (AT, BE, CZ, DE, DK, EE, ES, IE, LT, LU, NL, PL and RO).

The third group of countries consist of countries that have adopted relatively mild work-related sanctions and that have a relative low percentage of severely material deprived people (CH, FI, NO, SE).

Note that these groups almost entirely overlap with the groups of countries distinguished in Section 5.5. The only differences are the UK (represented in group 1 in Figure 5, but not in group 1 in Figure 4) and Spain (represented in group 1 in Figure 4, but not in group 1 in Figure 5).<sup>74</sup> Moreover, the results show that the group of countries that have adopted high work-related sanctions, that have relatively high rates of long-term unemployment and that have a relatively high percentage of severely deprived people all belong to the post-

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<sup>74</sup> Note that there were no Eurostat Data available on long-term unemployment for Switzerland.



Communist European welfare state type or the Mediterranean welfare state type, with the exception of the UK which belongs to the liberal welfare state type. By contrast, the group of countries that have adopted low work-related sanctions, that have relatively low rates of long-term unemployment and that have a relatively low percentage of severely deprived people all belong the she social-democratic welfare state type.

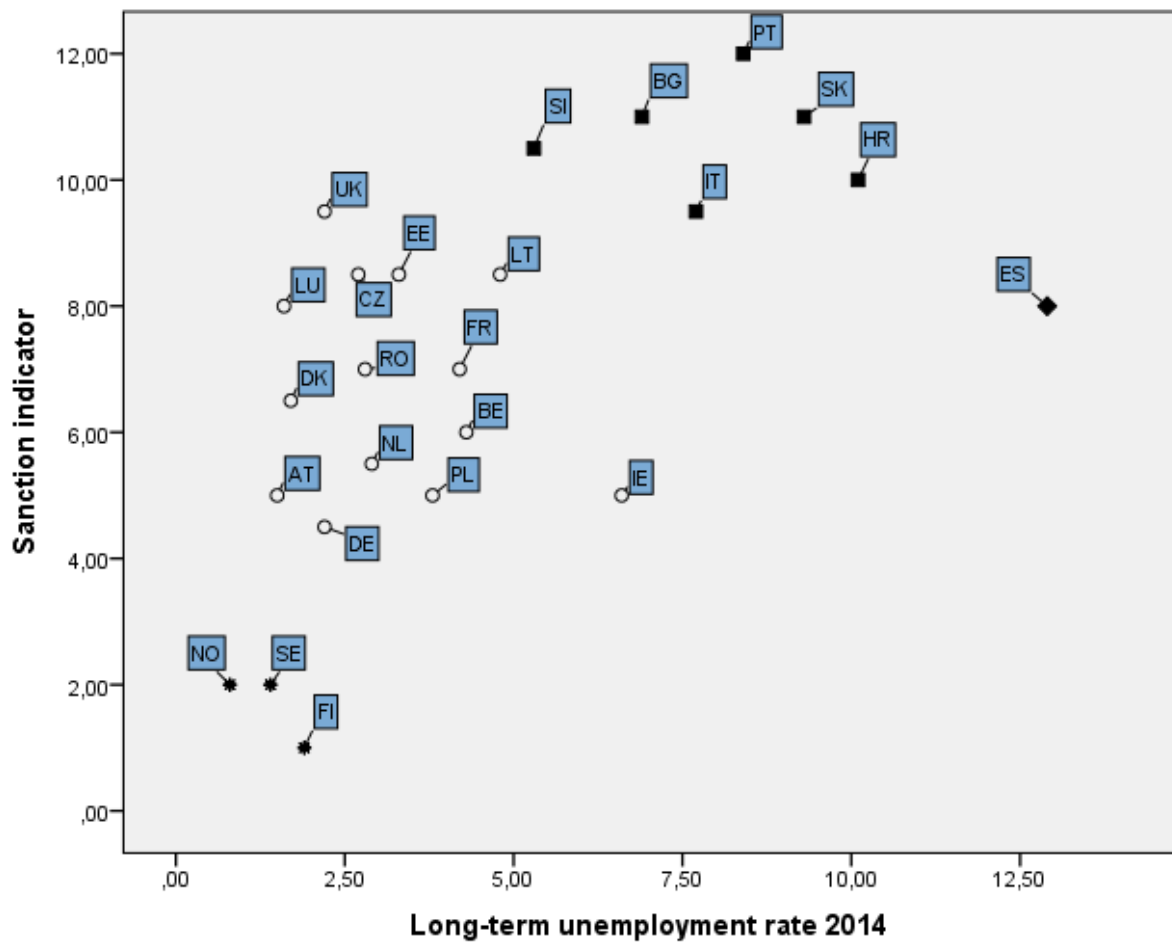
**Table 7: The relationship between the high-sanction indicator and the unemployment rate, and indicators of risk of poverty and social exclusion**

	Unemployment rate <sup>75</sup> (excl. ES)	Long-term Unemployment Rate <sup>76</sup> (excl. ES and IE)	Percentage of people at risk of poverty and social exclusion	Percentage of people at risk of poverty	Percentage of people younger than 60 living in a household with very low work intensity	Percentage of people who are severely materially deprived (excl. BG and RO)
Spearman's correlation	0.528 (0.556)	0.671 (0.768)	0.509	0.411	0.287	0.691 (0.704)
Significant at	0.008 (0.006)	0.000 (0.000)	0.009	0.041	0.165	0.000 (0.000)
Number of observations	24 (23)	24 (22)	25	25	25	25 (23)

**Source: Eurostat Data 2014**

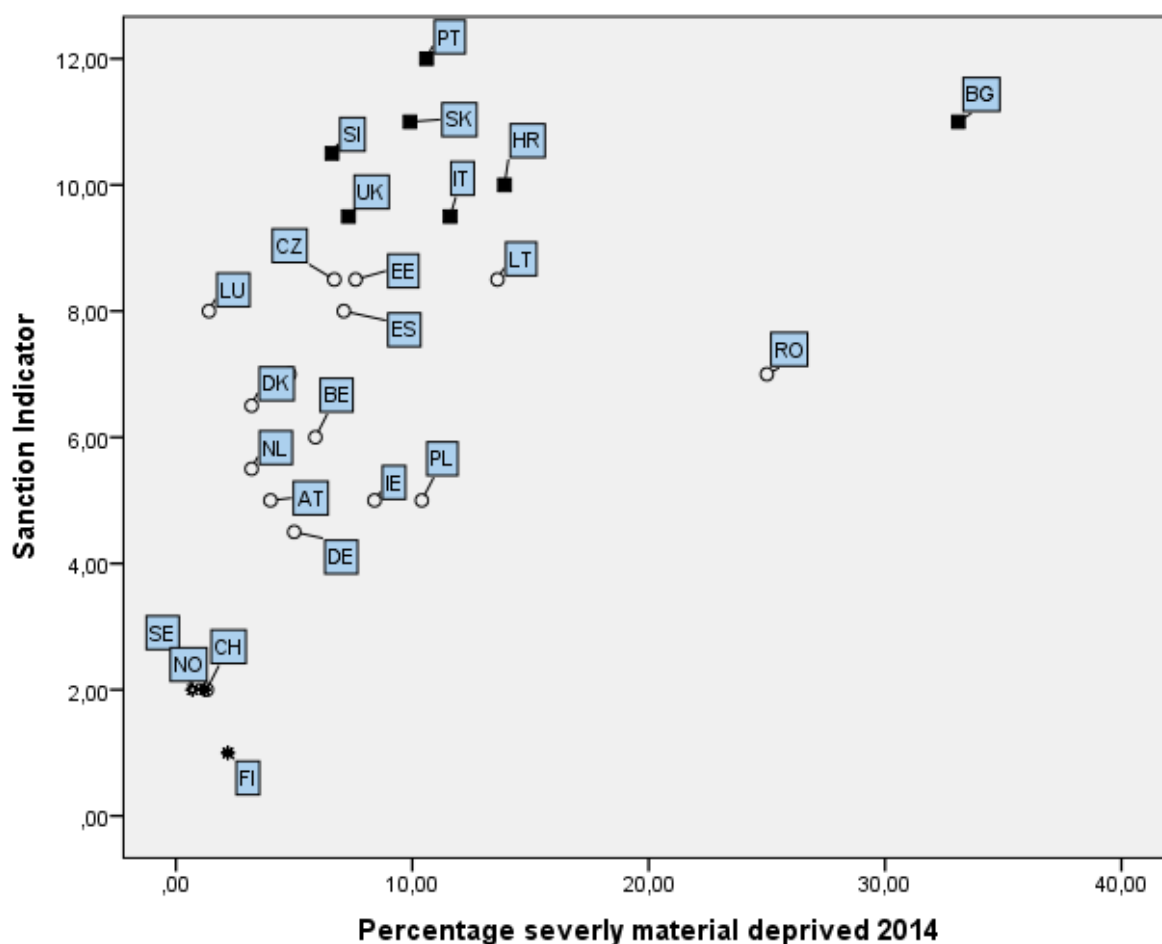
<sup>75</sup> Switzerland was excluded, because Eurostat did not provide data for Switzerland.

<sup>76</sup> *Ibid.*



**Figure 4: The relationship between the long-term unemployment rate in 2014 and the sanction indicator**

**Source: Eurostat data 2014**



**Figure 5: The relationship between the percentage of people who are severely materially deprived in 2014 and the sanction indicator**

**Source: Eurostat data 2014**

## 6. Conclusions and recommendations

Section 5 has shown that almost all countries have adopted a wide range of sanction-backed activation measures in their social assistance regimes. Bulgaria and Lithuania are the only countries that have not adopted at least five out of six work-related sanctions in their social assistance system. Hence, when it comes to social assistance schemes, most European (Member) States seemed to have turned to activation states.

While there are no large differences between the rankings on the list of the high-sanction indicator and the low-sanction indicator, it is remarkable that, particular countries that were the forerunners in activation policies -Denmark and the Netherlands- show relatively large differences in ranking on both lists. An explanation for this is perhaps that as a result of their relative long experience with activation policies, these countries have been able to develop a

more fine-grained sanctioning regime. The results further show that among the countries that have adopted relatively high sanctions, post-Communist European and Mediterranean welfare states are overrepresented. In contrast, social-democratic welfare state types and conservative welfare state types are overrepresented among the countries that have adopted relatively low sanctions. Hence, it could be argued that in these latter welfare states, the right to minimum basic means of subsistence is more secure when it comes to the sanctioning regime. Moreover, four of these welfare states, Finland, Norway, Sweden and Switzerland (canton of Zurich), have explicitly stipulated that benefits may only be reduced on the condition that they are set at a decent minimum level.

The analysis shows that countries that score high on the list of the high-sanction indicator, such as Portugal, Bulgaria and Slovakia have adopted less mitigation clauses (i.e. reparatory clauses, discretionary clauses, good reason clauses and hardship clauses) in the social assistance legislations compared to countries that score low on the list of the high-sanction indicator. In addition the former countries, tend to have higher levels of long-term unemployment, and people living in these countries are more at risk of social exclusion and poverty, in particular when it comes to the risk of being severely materially deprived, which is an absolute measure of the at-risk-of-poverty rate.<sup>77</sup> Assuming that the work prospects of recipients of social assistance are relatively low in countries that suffer from high levels of unemployment, and assuming that sanctioned recipients of social assistance living in a country that shows high risks of severe material deprivation will find difficulties finding financial help in their informal network, the results indicate that countries that score high on the list of the high-sanction indicator are particularly at risk of violating the right to minimum means of subsistence.

In addition, the results show that the welfare state type matters: particularly countries belonging to the post-Communist European welfare state type or the Mediterranean welfare state type are at risk of violating the right to minimum means of subsistence. This risk is considerably reduced in countries belonging to the social-democratic type (except for Denmark).

These results cast doubts on the current approach of European Union policies that considers work-related sanctions only in terms of activation to work. Examining work related sanctions from a social rights perspective suggests that this approach is one-sided, particularly with respect to countries that score high on the list of the high-sanction indicator. Insofar as EU

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<sup>77</sup> As we saw in Section 5, the other sub indicators - the at-risk-of-poverty-rate and the work intensity – only show a low correlation with the harshness of the sanctions.

policies of *active inclusion* value adequate income support, it would be wise to consider the possible adverse effects of work-related sanctions on the achievement of this goal.

The Conclusions of the ECSR could be a source of inspiration for policies of *active inclusion* that genuinely endorse a social rights perspective. For example, the European Commission could advocate the adoption of reasonable hardship clauses in order to prevent the violation of basic social rights. The European Commission could also encourage the adoption of other mitigating instruments, such as reparatory, discretionary and good reasons clauses.

However, as was mentioned in Section 3, we should be cautious not to exaggerate the preventive effect of discretionary clauses. The exercise of discretionary power involved in decisions over who will be punished, what counts as a good reason, what has to be done to repair a fault, and what counts as hardship, all render the recipient to some extent dependent on factors such as the specific relationship with the decision maker, budget issues and prevailing discourses. These are all factors that, at least from a social rights perspective, should be irrelevant in the decision-making process. Therefore, it is perhaps wiser to advise the Member States to redesign the national social assistance regime in a way that prevents the violation of social rights in a 'safer' way. For example, this could be done by constructing a system whereby a work-related sanction only affects the basic component of social assistance benefits without touching components for the costs for children, paternity, rent and heating, and probably also the basic social assistance benefits for the partner. Note in this respect that whereas the UK ranks relatively high on the list of the high-sanction indicator, the effects of the work-related sanctions are mitigated because the components for the children and the rent are not affected by the sanction. Another 'safe' and familiar way to mitigate work-related sanctions is the regulations of income dependent subsidies and benefits outside the social assistance regime. For example, in the form of child benefits or rent subsidies (Wang and Van Vliet, 2014). Indeed, in practice it will be difficult to distinguish income dependent child benefits from a child component in social assistance benefits.

This paper encourages further research on the (financial) effects of work-related sanctions in countries that score high on the list of the high-sanction indicator for different family types, which considers to what extent the sanction is imposed on the *entire* social assistance benefits and which takes into account all public subsidies. Then, regarding the powerful policy discourse on activation policies, only 'hard numbers' will be able to challenge the standard view in (the literature on) social policies, which considers work-related sanctions predominantly as a means of activation, without considering possible violations of the right to the minimum means of subsistence. Finally, more research need to be done to find out

whether and how mitigation clauses are implemented and whether the decision maker still exercises some kind discretion in the absence of these mitigation clauses.

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## Appendix 1

### Legislation that has been considered for this study

Country	Name Legislation (English translation)
Austria	Vereinbarung zwischen dem Bund und den Ländern gemäß Art. 15a B-VG über eine bundesweite bedarfsorientierte Mindestsicherung ( <i>Agreement between the Federal and State Governments about a nationwide demand-oriented minimum benefit</i> )  Wiener Mindestsicherungsgesetz ( <i>Vienna Act on Minimum Benefits</i> )
Belgium	Wet van 26 mei 2002 betreffende het recht op maatschappelijke integratie (leefloon) ( <i>Act concerning the right to social integration</i> )
Bulgaria	Закон за социално подпомагане ( <i>Law on Social Assistance</i> )  Правилник за прилагане на закона за социално подпомагане ( <i>Regulation on the application of the Law on Social Assistance</i> )
Croatia	Zajamčena minimalna naknada ( <i>Social Welfare Act (Official Gazette 157/2013)</i> )
Cyprus	<i>Law Providing for the Minimum Secure Income and more general Social Benefits (Law 167(I)/2002)</i>
Czech Republic	příspěvek na živobytí ( <i>Minimum Income Support (livelihood subsidy) (Act no. 110/2006)</i> )
Denmark	Lov om aktiv socialpolitik ( <i>Statutory act on active social policy</i> )  Lov om aktiv beskæftigelsesindsats ( <i>Statutory act on active employment policy</i> )
Estonia	<i>Social Welfare Act (Act of 01.04.1995)</i>
Finland	Laki toimeentulotuesta ( <i>Social Assistance Act (Act of 30.12.1997/1412)</i> )  Asiakaslaki (Laki sosiaalihuollon asiakkaan asemasta ja oikeuksista ( <i>Act on the Status and Rights of Social Welfare Clients (Act of 22.09.2000/812)</i> )
France	Revenu de Solidarité Active ( <i>Solidarity Income (Act of 03.12.2008, nr. 2008-1249)</i> )
Germany	Grundsicherung (SGB II) ( <i>Basic insurance</i> )
Ireland	Consolidated Social Welfare Act 2005
Italy	Decreto Legislativo 04.03.2015 n. 22 Disposizioni per il riordino della normativa in materia di ammortizzatori sociali in caso di disoccupazione involontaria e di ricollocazione dei lavoratori disoccupati, in attuazione della legge 10 dicembre 2014, n. 183. ( <i>Legislative Decree 04.03.2015 no. 22/2015 Recordering of legislation regarding unemployment benefits in the event of involuntary unemployed people reintegration, pursuant to Law 10 December 2014, no. 183.</i> )

Lithuania	Lietuvos Respublikos Piniginės socialinės paramos nepasiturintiems gyventojams įstatymas“. Nr. XI-1772, 2011-12-01, Žin., 2011, Nr. 155-7353 (2011-12-20) ( <i>Social Assistance Law</i> )
Luxembourg	Loi du 29 avril 1999 portant création d'un droit à un revenu minimum garanti. ( <i>Act of 29 April 1999 on the right to a guaranteed minimum income</i> )
Norway	LOV-2009-12-18-131 om sosiale tjenester i arbeids-ogvelferdsforvaltningen (stnavl.) ( <i>Act of 18 November 2009 No 131 regarding Social Services in the Labour and Welfare Administration</i> )
Poland	Ustawa z dnia 12 marca 2004 r. o pomocy społecznej (t.j. Dz.U. z 2015, r. poz 163) ( <i>Act of 12.03.2004 on social assistance. Journal of Laws 2015, item 163</i> )
Portugal	Rendimento Social de Inserção Lei n.º 13/2003 ( <i>Social insertion income regime</i> )
Romania	<i>Law on social assistance (L291/2011) and Law on the minimum income guarantee (L416/2001)</i>
Slovenia	ZSVarPRE ( <i>Financial Social Assistance Act</i> )
Slovakia	Pomoc v hmotnej núdzi ( <i>Benefits in material need</i> )
Spain	Real Decreto-ley 3/2011 de medidas urgentes para promover la transición por desempleo y mejora de la ocupabilidad. ( <i>Royal Decree-Law 3/2011 of 11 February on urgent measures on employability and reform of active labour market policies</i> )
Switzerland	Bundesgesetz über die Zuständigkeit für die Unterstützung Bedürftiger ( <i>The federal law on the support for persons in need</i> )  SKOS-Richtlinien ( <i>SKOS Guidelines</i> )  Sozialhilfegesetz Kanton Zürich ( <i>Social assistance law Zürich</i> )  Sicherheitsdirektion Kanton Zürich, 14.2.01. Leistungskürzung als Sanktion ( <i>Benefit reduction as sanction Zürich</i> )
Sweden	Socialtjänstlagen (2001:453) ( <i>Social Services Act</i> )
UK	Income-based jobseeker's allowance and Universal Credit

## **Appendix 2**

### **Country specialists**

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