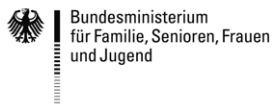


# **Reconciling labour flexibility with social cohesion – Ideas for political action**

Trends in social cohesion, No. 16

This publication has received political and financial support from the German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, and the Nordic Council of Ministers



Council of Europe Publishing

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## PREFACE

Based on our commitment to human rights, democracy and the rule of law, social cohesion, as outlined in our Strategy for Social Cohesion, represents a crucial element in the fulfilment of these fundamental rights. It is natural that the Council of Europe seeks to develop a rights-based approach to social cohesion.

As understood by the Council of Europe, social cohesion is “the capacity of a society to ensure the welfare of all its members, minimising disparities and avoiding polarisation”. A cohesive society is a mutually supportive community of free individuals pursuing these common goals by democratic means.

Welfare implies not only equity and non-discrimination in access to human rights but also the recognition of the dignity, the abilities and the contribution of each person to society; the freedom of each individual to pursue their personal development; and the possibility for each person to participate actively as a full member of society.

It is easy to see that the changes in the structure and legal environment of the working world and the enhanced flexibility in the use of labour seem to be key factors that challenge social cohesion. Ideas on how to reconcile labour flexibility with social cohesion are crucial for the Council of Europe. This is why we dedicated our Social Cohesion Forum 2005 to this challenge.

There, and in the previous publication in this series, we could see that labour flexibility often makes people feel less secure and, as we have heard from the World Health Organization, this can affect people’s physical and mental health. We have also seen how labour flexibility can represent an opportunity for some but tends to exclude others; how it can hinder people from accessing stable income, assured social protection and decent housing and how it can interfere with a healthy work-life balance and lead to people postponing parenthood.

However, the forum has shown that it is by no means impossible to bring together the different stakeholders to find agreed ways of reconciling labour flexibility with social cohesion. For instance, while employees are averse to risk they are not necessarily against flexibility as such and employers need stability and reliability in employment relationships. They are not a priori mutually exclusive. Therefore, a potential win-win situation exists for mutually beneficial negotiation. Successful reconciliation is usually negotiated flexibility.

There are paths for building new forms of social cohesion in a world of flexible labour markets. Even though best practices cannot be simply transferred from one country or region to another, it is important to learn about practical and innovative instruments that can be part of a locally or nationally adapted strategy to achieve social cohesion.

However, not all of the strategies which we call “flexicurity” are equally compatible with social cohesion, as the debates on adequate social protection and on activation have shown. The Council of Europe’s approach to social cohesion can, I believe, contribute a normative framework based on social rights. There are political choices to be made.

This volume of Trends in social cohesion would like to contribute “ideas for political action”. It wants to shed some light on how to modify social protection, how to adapt labour law, how to create secure trajectories from one job to another, and how to balance professional and family life. It presents ideas on how to create new spaces for social dialogue and how – practically – efforts to reconcile labour flexibility with social cohesion could be tackled.

I hope we will all take these reflections as a starting point for action. Reconciling labour flexibility with social cohesion is entirely possible, but we still have a long way to go.

**Alexander Vladychenko**

*Director General Social Cohesion*

## INTRODUCTION

This issue of Trends in social cohesion complements the ideas set out in the previous one,<sup>1</sup> which served as the basis for discussions at the Council of Europe Social Cohesion Forum 2005 on “Reconciling labour flexibility with social cohesion” held in Strasbourg on 17 and 18 November 2005. Issue No. 16 will attempt to conclude the debate with a number of useful ideas on reconciling labour flexibility with social cohesion.

At the forum, more than 280 experts from the Council of Europe member states met to discuss this social issue. The participants, who came from a variety of backgrounds – politicians, researchers, and representatives of local, regional and national authorities, the social partners and civil society – exchanged innovative ideas and debated the possible strategies for reconciling flexibility and cohesion. The speakers included the Danish, Slovenian and Mexican Ministers for Labour, Claus Hjort Frederiksen, Janez Drobnič and Francisco Xavier Salazar, the Chairman of the European Socialist Party and former Danish Prime Minister, Poul Nyrup Rasmussen, the former Secretary General of the International Labour Organization, Michel Hansenne, and the current ILO Deputy Regional Director for Europe and Central Asia, Alena Nesporova, representatives of the European Union, OECD, the World Health Organization and the Nordic Council. The delegations of virtually all the Council of Europe member states included several former ministers, European and national MPs, various eminent researchers and representatives of the social partners such as the Deputy Secretary General of the European Confederation of Trade Unions, Maria Helena André.

The conclusions of this pan-European exchange were highly encouraging. It was clear that despite a wide diversity of positions and perspectives, the participants share the determination to find ways of reconciling labour flexibility, security and social cohesion. All the speeches pointed to the fact that such reconciliation is possible and in the interest of all.

Nevertheless, there is still a long, difficult road ahead before we can achieve effective reconciliation. This issue is designed to inspire and help identify possible solutions. To that end, we shall be breaking down the “reconciliation” question into three different levels:

- the overall scenario of changes in society, labour market structures and the content of the rights hitherto used for regulating the labour market;

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1. *Reconciling labour flexibility with social cohesion – Facing the challenge*, “Trends in social cohesion”, No. 15, Council of Europe Publishing, Strasbourg, 2005.

- institutional and societal spaces within which the reconciliation issue must be addressed: social protection systems, legal frameworks for mobility and transition, and the family context;
- the requisite methodology for ensuring that social cohesion is taken into account and reinforced and the players involved are fairly represented when negotiation frameworks are modified; the question of individual coherency in market choices is also analysed in this context.

Where these three levels are concerned, this issue will concentrate on the specific situations in western Europe. Having realised that the problems are different in central and eastern Europe, we shall be dealing with these countries in a separate issue.

### **The rapidly shifting scene**

The first analytical level – with five articles – concerns the political challenge of incorporating changes geared to “flexibilising” the regulation of labour into a democratic tradition designed to provide “labour” with a progressive set of rights. Negotiations among the parties concerned in western Europe have concentrated on transforming labour into an activity which promotes human dignity, based on steady long-term relations that lead to a series of individual and collective rights, including the right to vocational training. “Modernisation” has therefore drawn on the future-oriented approach of combating “degrading” work involving the abuse of weakness, turning a blind eye to the fact that the worker is also an integral part of a family and a full member of society. Labour/work has provided the way towards citizenship and the realisation of civic and political belonging. As a creator of references and class positioning it has influenced social structures, including the mechanisms for redistributing productivity gains and constructing spaces for negotiating the conflicts inherent in arbitrating divergent interests. The negotiated “consensus” has thus become a source of social innovation. Furthermore, in post-war central and eastern Europe, the exaltation of the worker’s dignity was part of the dominant ideology, even though workers had no individual autonomy or explicit spaces for expressing conflicts. We cannot hope to understand our European societies without going into the significance ascribed to work and the dignity of the worker. Even the legitimacy of authority within families is bound up with this significance.

On the other hand, what is labour today, and what has been the impact and significance of the measures adopted to reform it and make it more flexible, or else to deprive it of some of the rights previously attached to it? Are these processes being echoed and supported by “individualism” and the quest for increasing autonomy, as Michel Hansenne contends in his contribution? Is the demand for diversifying individual forms of personal achievement and social affirmation,

notably through consumerism, economic success and also the ability to look after one's own family and develop competences/knowledge in fields unrelated to employment or employability creating an allergy to over-standardised forms of organisation both east and west? Is such self-affirmation exerting an influence on the structuring of enterprises and markets?

Above and beyond the radical individualisation of needs and a certain wariness about collective structures as mechanisms for securing well-being, a short-term vision seems to be emerging in our mode of consumption, production and profit-making. Does this indicate that the short term is gaining the upper hand despite the many concerns being voiced on the sustainability of this model, in which speed and immediacy govern economic decision making? The problem is that what is volatile to some means fluidity to others, and to others still, sadly, insecurity, that is to say constant breakdowns and forcible interruptions, leading ultimately to rigidity and social inertia. As Luciano Gallino demonstrates, the reconciliation under discussion is going to have to take place in a fragmented society which concentrates on the short term. If we push flexibility beyond certain negotiated limits, discontinuity becomes difficult to "control" because it becomes part of a framework in which labour categories multiply to such an extent that virtually every worker becomes a special case. The first prerequisite of reconciling flexibility and social cohesion is to simplify the current contractual typology. Extreme fragmentation does not make for intelligent management of labour relations and transition, and raises problems not only for the workers but also for the enterprises themselves.

Beyond the endeavour to free up individual energies, why should the problem of reforming labour markets be so acute just now? Are there other reasons behind the issue of participation rates, that is to say the question of improving the functioning of the labour market by concentrating on active employment policies, as Räsänen explains in his text? Tackling unemployment emerges as the standard justification for the reforms, as does the need to control the effects of demographic change. Nevertheless, attempting to achieve flexibility by cutting back on legal protection for labour is seldom crowned with success. As an OECD expert pointed out during the forum, for example, the relationship between labour protection legislation and the creation of such legislation is neither simple, linear nor automatic. Such a perception covers up the thorny problem of job creation, which can depend on many other additional factors. A radical cultural change in enterprise-worker relations prioritising the immediate rather than the long-term financial results is tending to exacerbate this problem. Has an unfair approach to economics taken over from the loyalty value which in the past made such a contribution to balance in workers' lives and social cohesion? These are some of the questions that we shall be tackling.

The urgent problem now is not to differentiate between the results of active<sup>2</sup> and passive<sup>3</sup> employment measures, which would not be all that simple either, but rather to consider the major changes effected on the labour market by the idea of a “knowledge society”, as mentioned in the Lisbon Strategy. If lifelong employment is now part of the past, the price to be paid for such a transition must be fairly apportioned, whereas in fact the tendency is to believe that life-long “employability” or “adaptability” is a matter for the workers themselves.

The risks of labour market reform in western Europe are mainly to young and under-skilled workers, and are primarily expressed at the legislative level. Unlike in the post-war period, the word “modernisation” is today used to signify that the rules and rights relating to labour can adapt to the changing needs of employers, as Marie-Ange Moreau explains in her text. This adaptation process is also referred to as “restructuring”, “flexibility” and “modernisation”.

In order to open up the debate, it should also be noted that the word “flexibility” is used in a completely different way in central and east European countries. Ever since the 1990s the intensifying quest for freedom of individual action and the general desire to shake off rules and constraints have led people (in a context of institutional and economic reconstruction) to collectively integrate the concept and practice of “playing it by ear”. In these countries the word “flexibility” has none of the negative connotations of abandoning “desired” rules and frameworks for protection: it rather means freeing workers and enterprises from the undesired rigidity which used to prevent them from expressing any individual initiative. Moreover, given the association of social “rigidity” with the communist period, it is the older generation that is paying the highest toll, particularly in the countries which recently joined the European Union, where young skilled employees are now taking up positions of responsibility, a social statement of the prevalence of flexible approaches and risk-taking.

The foregoing comments show the whole complexity of the flexibility issue in a Europe which is no longer confined to its western flank and in which political history has forged different collective consciousnesses. The acceptable “flexibility threshold” is thus established on the basis of political choices and of the inter-relationships between the new interests and the historical consciousness, especially the social representations of equity (which is a basic component of social cohesion), that is to say the acceptance by society of various modes of redistribution and subsidising among different types of workers.

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2. Services/government departments for employment, measures for young people, subsidised employment and measures for people with disabilities.

3. Unemployment benefit and early retirement.

Workers in western Europe regard “regulation” as a necessity for achieving balance in globalisation, which explains the urgent need for a legal definition of “flexibility” and flexicurity: historically, the right to work and the corresponding case law have had the function of protecting individuals/workers and promoting collective bargaining dynamics.

The legal imprecision of the word “flexibility” pinpointed by Marie-Ange Moreau has given rise to a typology based on such parameters as working hours, conditions for entering and leaving employment, internal/external modes of organisation, spatial mobility and worker performance and pay. Each of these parameters involves different modes of regulation and their effects can, paradoxically, diverge widely from the ideology or primary reason used to justify them. For instance, the growth in self-employment can be seen as an increase in autonomy, but it has reached such levels in central and east European countries that it must surely conceal a rise in a type of paid work lacking any legal protection. Without taking the analogy too far, even supermarket checkout assistants (a new type of job in these countries) are for the most part self-employed workers who arrange for their own social security coverage, while remaining completely dependent on their employers for the organisation of their working lives.

It is vital that we clarify the relationship between flexibility and deregulation. The experience of such countries as Sweden and the Netherlands shows that flexibility can be organised in a strongly regulated market, or rather by means of relevant, appropriate regulations to meet the needs of changing societies. The United Kingdom is the only country to have used complete deregulation to achieve flexibility (see Table 2 in the Räisänen contribution).

The vagueness of the word “flexibility” is jeopardising the rights of the weakest sections of the population. In connection, for example, with occupational mobility, the workers with the highest standard of education will find it easier to fulfil the lifelong employability<sup>4</sup> criterion regarding adaptation by means of career-long training. Under certain conditions, moving from one job to another will help increase their competences and ability to adapt. Regulations are needed on the management of transition, which also covers contributions to social insurance schemes and retirement funds to ensure that workers can one day enjoy a decent pension. For the more vulnerable workers, reducing collective protection systems, individualising working relations and increasing their dependency on such intermediaries as temporary employment agencies interfere with their contractual power and ability to construct a process of maturing “capabilities” (Sen<sup>5</sup>) through on-the-job training. Why are present-day organisational patterns associating increasing numbers of employment breaks with the least qualified

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4. Stiglitz, J.E., *Quand le capitalisme perd la tête*, Fayard, Paris, 2003.

5. Sen, Amartya, *Development as Freedom*, Oxford, Oxford University Press, 1999.

workers? For the weakest sections of the workforce, flexibility usually takes the form of adapting to any old job, which sometimes even involves accepting pay cuts on recruitment.

Flexibility accentuates power “asymmetries”, which involve relations not only between employers and employees but also between skilled and non-skilled workers and among young, middle-aged and older workers. This is because, firstly, the enterprises’ power is exercised on the basis of transnational relations rather than locally like that of the workers, and secondly, the new technologies are facilitating the development of what is known as “codified” (or “codifiable”) knowledge in enterprises as opposed to the “tacit” competences of individuals, by making workers of different company seniority interchangeable (external flexibility).<sup>6</sup>

Coping with power asymmetry necessitates, on the one hand, enabling local restructuring policies for the maintenance of enterprises and employment to systematically incorporate global market strategies, and on the other, broadening the labour-law objective.

Where the former aspect is concerned, Marie-Ange Moreau suggests action at several different levels:

- public intervention: building up differentiated policies for workers who are exposed to global competition and for enterprises which are mainly concerned with cost-cutting, and therefore wage reductions, and also for those who are exempt from such pressures. This necessitates increased vigilance as regards protecting the fundamental rights and creating the requisite conditions for reskilling workers who are exposed to high risks;
- reflection on comparative regional advantages in terms of innovation supply: it is inconceivable in Europe today to base our analysis of comparative advantages on low-cost unskilled workers. Innovation-based competitiveness needs steady, highly skilled workers who are encouraged to use creative approaches and are capable of negotiating and dialoguing;
- support for absorbing the costs of restructuring: one example is the European Union’s “anti-shock fund”;
- worker organisation: workers should be capable of actively negotiating the terms and conditions for labour reallocation and transnational mobility;
- effective monitoring of fundamental rights: improving the efficacy of the European Social Charter procedures by ensuring wider dissemination of information on violations of rights, and reinforcing civil society agencies

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6. Gautié, J., “The destabilisation of internal labour markets and its consequences on employment and wages in OECD countries”, CEER Working Paper, p. 5 (2002).

specially authorised to report such violations both at the national level and through a transnational coalition of such agencies.

Where the latter aspect is concerned, Tiziano Treu suggests extending the scope of labour law to the following aspects:

- new grey areas in which paid employment and self-employment are difficult to distinguish;
- the danger of endless repetition of short-term contracts for the same individuals, and the conditions for “regulating” internal flexibility;
- resistance to mobility in response to the rigidity or inadequacy of social protection systems;
- improving educational and advisory services on the labour market;
- managing transitions and flexicurity;
- innovative collective approaches to labour relations;
- transnational and European labour legislation.

## **Institutional and corporate spaces for reconciliation**

Reconciling labour flexibility and social cohesion in today's world is a complex matter, as clearly emerges from the four articles on the matter in this publication. It is a case of reconciling individual aspirations for more autonomy with flexible institutional and organisational systems using a framework in which, in the name of exacerbated competition, the systems for distributing revenue between profits and wages tend to operate to the detriment of the latter (according to French trade unions, value added is increasing four times faster than wages), and all of this has happened on a very short time-scale. The really radical change as compared with the recent past has been in the viability of the instruments for reconciling flexibility and cohesion, particularly the social protection systems and internal market structures, which are the two instruments of profit redistribution and solidarity peculiar to any Fordist organisation of labour based on the long-term view.

### **Social protection**

In advanced societies, the challenge of reconciling flexibility and cohesion must be addressed against a background of change and reform vis-à-vis the boundaries of responsibility. For instance, the question of labour flexibility and support for transitions cannot be validly debated in isolation from changes in the money markets. The increasing size of investment funds, which are being structurally reinforced by the transition to pension funds fuelled by accumulation of capital, is indirectly but radically changing the rules of the game, namely the balance between community support and the risk shouldered by the individual. These

transformations would appear to be weakening protection as shared with the enterprises and leading to a preference for “external flexibility” over “internal flexibility”.

Reconciling labour flexibility and social cohesion necessitates a system of non-job-linked protection capable of securing the employee’s flexibility and supporting him or her in any necessary or desired transitions, as Ute Klammer demonstrates in her contribution.

This first of all requires an analysis of the foundations of our social protection systems, namely the balance between “commodification” and “decommodification”, that is to say the balance between support which is linked to an activity on the labour market or is aimed at integrating individuals into this market, and support which is independent from the market. Ute Klammer shows that if we want more flexibility we must combine elements of “commodification”, in the sense of activating social protection, with new “decommodification” aspects in order to ensure protection during various interruptions and transitions in the labour market.

Secondly, it is vital that we take account of individuals’ capacities throughout their lives. As Esping-Andersen<sup>7</sup> points out, social protection must be considered in the dynamic context of people’s actual lives. The important thing is not so much to ensure that social protection can counter the vagaries of life as to guarantee help for individuals in surmounting such difficulties with the passage of time. More specifically, since the conditions for well-being are often directly interlinked (for example, poverty in old age is often bound up with difficulties experienced during working life, etc.), it would appear vital to adopt the life-cycle reference frame as reprised by Klammer in a labour flexibility context.

These principles must be put into practice in a number of dimensions of the social protection system:

- the first step is to ensure the social management of reconciliation between labour integration and some degree of autonomy so that the individual can engage in other activities of significance for personal and human development (bringing up children, looking after elderly relatives, reskilling, community service, etc.). Social protection should support the transitional periods required for every individual’s personal development and realisation of his or her full potential. Such discontinuities are often in the interests of the whole of society. Social protection should therefore provide its specific input into the quaternary sector of the economy, that is services for others.<sup>8</sup> Such provisions as maternity leave could be extended to cover care for problem teenagers, dependent elderly persons and people with

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7. Esping-Andersen, G. et al., *Why we need a new welfare state*, Oxford University Press, Oxford, 2002.

8. See article in *Trends in social cohesion*, No. 14.

disabilities. Unemployment insurance could be turned into employment insurance for involvement in community services if the unemployed person so wishes, or “employability insurance” geared to promoting the acquisition of new competences. This makes flexibility an opportunity for taking account of the multiplicity of an individual’s needs throughout his or her life by facilitating management of “fruitful discontinuities”. Ute Klammer refers to the changes and fluctuations liable to be introduced into “adult worker models”;

- reconciliation also necessitates social guarantees on the fact that it must not always be the same persons who suffer “harmful discontinuities” detrimental to their personal development. When workers accumulate fixed-term contracts, are unable to develop a “curriculum of competences” rather than a mere “curriculum of transitions”, and cannot increase their personal earnings, their self-confidence is ultimately undermined and their personal potential dissipated, particularly in the case of young people. Household public and private investment in education must be allowed to bear fruit rather than allowing the growing incapacity for providing social guarantees on transitions between education and affirmation of competences through labour market integration to cancel it out, rendering it useless. For example, temporary employment agencies might conclude agreements with enterprises and the social protection systems in order to reinforce “competency construction services”, which would provide “discontinuous recruitment” with a medium-term dimension;
- thirdly, we must ensure the social integration of the idea that “confidence” is a factor promoting flexibility. Confidence helps people take risks in a stress-free manner; it opens them up to the desire for activity and mobility. Lack of confidence leads to rigidity. Confidence is the result of intelligent institutional action to support persons willing to take risks in order to change. To that extent the flexicurity concept helps build confidence with the assistance of the welfare state’s institutional action. Other possible factors might include enterprises providing training for transition, drawing on the model of Bugatti in Alsace, which recruits young workers for set periods (a minimum of two years), providing them with tutors to help them build up competences for the future. Confident risk-taking is a factor for self-development which involves a protection strand. Unassisted risk-taking is a factor which leads to the destruction of human capital;
- lastly, Denmark (contribution by the Danish Minister for Labour reproduced in this issue) and the Netherlands<sup>9</sup> provide good examples of social protection systems tailored to flexibility. Analysis of both systems shows that successful reconciliation of flexibility and security requires a systemic action “framework”, within which social protection is given pride of place within

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9. See Trends in social cohesion, No. 15, article by Wiltshagen.

an intensely redistributive fiscal policy and a policy of dialogue and consultation among all those involved based on the principle of rights/duties and measures to activate/ensure egalitarian access to social benefits and employment opportunities for all.

### **Mobility and transitions**

Reconciling flexibility and cohesion also necessitates combating inertia caused by fear. The fear of losing one's job, of being unable to cope with change and of failing to secure recognition of one's competences is an obstacle to the type of personal development which should be one of the hallmarks of dynamic societies. In addition to encouraging internal or functional flexibility, various forms of "directed flexibility" among "co-operating enterprises or structures" could be used as a means of overcoming fear-generated inertia. Public authorities should support the formation of national and European inter-enterprise or inter-structure co-operation centres with an eye to facilitating guided mobility. We must move towards "wing security rather than shell security",<sup>10</sup> and we would therefore do well to create a new European exchange programme for workers geared to improving labour quality and at least partly overcoming fear: it might be entitled Pegasus, in order to "lend wings to labour".

Bernard Gazier demonstrates that appropriate restructuring practices can determine the options for ensuring smooth transitions. He proposes a framework of "transitional labour markets" designed to identify such practices. This framework sets out the criteria for proper transition along lines close to those on well-being defined in the Council of Europe's social cohesion concept,<sup>11</sup> with an eye to creating the preconditions for risk-free mobility.

And so we must conclude that it is vital to support efforts to promote mobility by means of legal frameworks, criteria and transition management rights. Such rights are designed to protect specific categories of workers, particularly the most vulnerable ones, from the pitfalls of flexibility. Their primary function would be to ensure proper management of the transition from temporary jobs to steadier working arrangements. Secondly, they would facilitate adaptation of working time scales (increases/reductions in working hours) throughout working life through increased recourse to "sabbatical year" type arrangements in order to develop personal and/or collective-interest activities (for example, periods of community service). Rights in terms of adapting working hours to family needs (free time in lieu of paid overtime) by organising "team" working hours and "working time accounts" could enable workers to better control their personal

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10. Schmid, G., "Employment insurance for managing critical transitions during the life cycle", in Gazier, B. and Auer, P. (eds.), "The future of work, employment and social protection", International Institute for Labour Studies, Geneva, 2002.

11. See also Barbier, Trends in social cohesion, No. 15.

time with a view to guaranteeing flexibility that will benefit both workers and enterprises (see Ute Klammer's article). Recognition of rights to transition is especially vital as increased responsibility and individual risk-taking does not necessarily mean any mitigation of the subordination specific to the former Fordist model.

## **Family**

The flexibility debate has also brought up the issue of new balances in family life, whose organisation has always been, and still is, dependent on labour organisation. This wide-ranging area of societal negotiation involves such aspects as trade-offs between career and free time (with possible concomitant social sanctions), a degree of flexibility in the temporal management of full-time as compared with part-time work and periods of leave, the differentiated requirements from men and women and the actual margin of choice, especially for single-parent families and less skilled workers, deliberate career interruptions, the unpredictability of temporary contracts, societal and legal support for sharing household tasks, including childcare, the radical change in the ratio of female participation to birth rates, the association of part-time work with jobs deemed of inferior status, regulation of the working week depending on the workers' age and family situation (for example, in Sweden, workers with very young children can work a six-hour day), the ratio of paid to unpaid work, the right to return to work, etc.

Maria Jepsen provides an insight into the whole extent of the debate and the long road ahead. Her article analyses the input from and the limits of the flexicurity model, particularly where the status of women is concerned, with 31% of female workers in European Union countries working part-time, as against less than 7% of male workers. Flexicurity measures are providing greater security and future prospects for part-time work, with enhanced entitlement to leave and lifelong training. However, the debate on reconciling work and private life goes far beyond the concept of flexicurity. On the one hand, we have the question of genuine choices in terms of responsibilities related to unpaid work and apportionment of time between work and childcare, and on the other the issues of links between work quality, careers and part-time work, as well as the consequences for social protection in societies which are increasingly individualising benefits. Lastly, further investigations are needed into the relationship between work flexibility and fertility rates, particularly given the fact that women are more inclined to have children if their professional development is made compatible with founding a family.

## **Reconciliation methodologies**

The forum also discussed the importance of working on methods of reconciling labour flexibility and social cohesion in the light of the Council of Europe's approach to social cohesion. We will therefore be devoting the last section of this issue to a number of methodological aspects.

Where social cohesion is concerned, reconciliation methods must comprise three dimensions:

- ensuring behavioural coherency in the multiple roles played by all players involved;
- including the players in political negotiations on transitions;
- creating political tools for monitoring assessment.

### **Coherency in the behaviour of the various players involved**

It is difficult to see how a reconciliation model could be organised without acknowledging the overlapping of the players' various roles on the market. Everyone is both a consumer/saver and a worker (or retired worker). Any loss of an overall vision of these multiple roles leads to contradictory behaviour on the part of one and the same individual. For instance, concentrating on minimum costs has the effect of encouraging the proliferation of badly paid jobs, particularly in Southern countries but also, increasingly, in the North, where the unprotected informal sector is in constant expansion. Higher profits from pension funds or retirement insurance schemes have an effect on the conditions for intensifying and organising employment.

Michel Hansenne mentions this need for coherency in his text. The Council of Europe is also working on generating dialogue on the value of ethical, solidarity-based approaches to coherency in individual attitudes and choices vis-à-vis the markets.

### **Including the players in political negotiations on transitions**

Reconciling flexibility and cohesion requires negotiation. Including the parties involved in decision making on labour transformations facilitates consultation on the possible solutions, and also guarantees the legitimacy of the measures adopted. It is necessary to enable players (particularly the more vulnerable ones) to feel respected rather than intimidated, thus ensuring that they can accept and genuinely appropriate the negotiated compromise.

But the fact is that labour flexibility submerges or at least blurs the possibilities for negotiation. The traditional negotiating forums are looking increasingly powerless and inadequate. For example, who can be considered as an employee in an enterprise where the value-added chain comprises employees from different

enterprises of differing status, including self-employed workers? Should we not also be trying to identify parties to the dialogue other than just the traditional social partners, and perhaps also include temporary employment agencies, for instance? How are we to take account of the value-added production chain in negotiations on the responsibilities arising out of flexibility rather than the enterprise *per se*?

In his contribution, Matthieu de Nanteuil Miribel describes this mismatch between traditional statutory frameworks and the inadequacy of the current mode of governance. He develops options for a new statutory approach, concluding with proposals for new model partnership agreements based on the joint responsibility concept developed by the Council of Europe.<sup>12</sup>

### **Creating political tools for monitoring assessment**

If we are ever genuinely to reconcile flexibility and cohesion, dialogue between the players must necessarily be based on certain references capable of providing a framework for the procedures to monitor and assess developments in labour flexibility against the social cohesion dimensions which we wish to preserve. Which aspects should we include? The forum pointed to a wide variety of dimensions that must be taken into account, for example fair access to employment and the corresponding rights, the subjective feeling of insecurity or confidence, freedom to manage one's own career, opportunities for people to voice their opinions during the "flexibilisation" process, etc.

However, the approach to social cohesion proposed by the Council of Europe refers to all these aspects of flexibility and clarifies which dimensions should be taken into account from the social rights angle in any attempt to reconcile flexibility and cohesion. This approach would be an innovation in terms of this whole debate. The Dutch researcher Ton Wilthagen has, precisely, linked up this approach with labour flexibility. In co-operation with the Council of Europe's Social Cohesion Development Division, he is currently targeting the direct application of this Council of Europe approach, which was set out in the *Concerted development of social cohesion indicators – Methodological guide*,<sup>13</sup> to the issue of labour flexibility and presenting ideas for developing a policy instrument on this subject.

This instrument, in the form of a social cohesion test or a "policy checklist for reconciliation", might serve as a "toolbox" to help us to identify the multiple problems in terms of social cohesion emerging from the changes geared to introducing labour flexibility, and to consider an outline strategic solution. This

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12. *Concerted development of social cohesion indicators – Methodological guide*, Council of Europe Publishing, Strasbourg, 2005.

13. Op. cit.

instrument could therefore help conceptualise the reconciliation challenge. In addition to structuring the debate it could be used as a prescriptive framework for the debate from the social and economic rights angle. Particularly at a time when the flexicurity concept is increasingly present in the debate, this tool might also facilitate a new debate on the quality of these flexicurity arrangements.

So the instrument in question would have the aim of prompting discussion on the requisite links between social values and the necessary economic relations, and initiating a virtuous circle of reform/confidence in the future. It is also designed to help overcome the confidence crisis which, according to Tony Lloyd, the Vice-President of the Parliamentary Assembly of the Council of Europe, is the precondition for ensuring that the reforms which are shortening the time frame can be accepted without destructuring society. Taking account of the multi-dimensional aspect of flexibility is a *sine qua non* for such acceptance. Confidence reigns when those who are working and those not working can live in dignity, accepting transitions as part of a process within which account is taken of their views.

Lastly, this introduction would be incomplete without another look at the issue of fundamental rights as promoted and defended by the international organisations. The labour law, welfare state and other reforms conducted at the national level could potentially have the effect of “emptying” the rights secured at the international level of their effective substance. The incoherency noted between different levels of governance induced the participants at the forum to call on the international organisations to shoulder their responsibilities as guardians of these fundamental rights, especially in these times of necessary reform and change. Should we not be defining the limits of the acceptable, as Michel Hansenne, the former ILO Director, is suggesting in this issue? At all events, increased coherency will be a key element for creating confidence in the political management of the transitions inherent in our societies.

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## **PART I – THE FRAMEWORK OF RECONCILIATION**

### **A – A complex society of uncertainty**

#### **I – Labour flexibility: the quest for competitiveness versus the need for social regulation**

*Michel Hansenne, former Director General of the International Labour Office*

##### **Introduction**

Everyone will instinctively agree that a link exists between labour flexibility and social cohesion. Yet there is no hard-and-fast definition of either of these terms, and when we try to examine the link more closely we are soon overwhelmed by the abundance of practices, definitions and classifications confronting us. This has once again been demonstrated by the preparatory work for the forum.

I should like to examine this question by focusing on the societal background to demands for flexibility, for only by understanding that background can we grasp the nature of the demands from businesses and workers and the attitude of social and political players to them. My categories do not correspond to the distinctions drawn by the specialists who deal with these questions, whether they are jurists, economists or sociologists. This is perfectly reasonable because I do not claim to be one of them. However, I consider the categories useful enough for practical purposes. Their aim is to encourage a better understanding of the new practices, clarify our attitudes, refine our judgments and, finally, arrive at a better definition of the responses that we can make to them.

##### **1. Flexibility against a background of stability**

My impression is that flexibility, as a topic of Community debate, started to attract attention in the mid-1980s. Many of our countries faced endemic unemployment at that time and it was necessary to discover whether a trifle more flexibility in the rules on the duration and organisation of working time would help to boost employment. The initiatives taken concerned the development of part-time work and easier recourse to temporary work. Other measures were directed at the introduction of new ways of adapting working time (work in two shifts over a twelve-hour period, weekend work) based on new concepts of the

professional career (early retirement, time off for training) and on new links between the various aspects of life (professional, family, training, etc.). More ambitious ideas concerned the all-round reduction of working time. However, in every case it was necessary to discover whether it was possible, through varied forms of jobs, to achieve a better division of the fruits of a growth that was increasingly running out of steam.

At that time, certain questions which will never cease to be debated were on the table. They included the following:

- Unemployment was and remains unacceptable. In the area of work, it is the factor most destructive of social cohesion. Flexibility initiatives must therefore be judged primarily on their ability to reduce unemployment.
- As we know, while flexibility is a source of fresh opportunities for both employers and employees (do we not talk nowadays of the “flexitime revolution”?), it can still easily cause many problems for employees and their families in terms of income, work-life balance and agreeableness or otherwise of working conditions. Everything is therefore a question of choice and balance. Our common concern at the time – and I hope it was not just for media consumption – was to create more and better jobs. We were anticipating in this way the idea of decent employment advocated in recent years by the International Labour Office, that is the right of every man and woman to have a decent productive job in conditions of freedom, equity, security and dignity.
- However, how and when are we to know that such a balance has been reached? Who decides? The important balances in labour law relating to the industrial society and to what is nowadays called the Fordist enterprise were established by laws and regulations of general scope, even though their application took account of the whole range of sectoral collective agreements. However, flexibility goes to the very heart of an enterprise and must make allowance for the specific nature of what it produces and for the kinds of occupations it entails. Heed must also be paid to the worker’s legitimate right to choose freely from the various working-time options. How can these traditional collective relationships not only adapt to such a situation but also continue playing their role in negotiated protection? How, in particular, can negotiation be decentralised at enterprise level and individual choice be reconciled with collective protection?
- The debate about flexibility soon spills over the narrow limits of the enterprise and of collective bargaining. Social security mechanisms, for example, have to be adapted to provide equitable coverage for jobs that no longer come under the conventional heading of full-time permanent employment. These changes were not simple and are still not always complete even today.

- However, this initial overall transformation did not call into question either the mechanisms governing professional relationships or the important balances achieved in labour law. Throughout this period, even though the approach had to become more pragmatic and experimental, the social dialogue and active tripartism functioned, notched up satisfactory results and, generally speaking, met the concerns voiced by the Council of Europe in its outstanding work on social cohesion.

Throughout that period, it seems to me, we usually made a point of retaining those consultation methods that had served us so well during the years of the post-war boom. We tried, not always without friction, to bring about an evolution in our European social model and to adapt it to the new circumstances rather than turn everything upside down.

Yet, with hindsight, what emerges most clearly is the fact that all those efforts to make things more relaxed and flexible were taking place in stable societies where labour protection had reached its zenith. The transformation was not to occur until some years later.

## **2. The uncertain society**

With the 1990s we pass through a new stage in the transformation of our industrial society that drastically alters a long-familiar landscape. The change was both profound and rapid; and, to a great extent, is still incomplete.

For many years our countries have been undergoing a profound change in the structure of employment, in the nature of work itself and in the conditions of its performance. The classical industrial enterprise model and the type of social policy that accompanied it during the thirty boom years after the Second World War have both gradually disintegrated. In that model, the balance between the demands of business efficiency and competitiveness and workers' need for security and well-being was based on labour legislation and appropriate social legislation. The traditional type of work was performed in accordance with a full-time, long-term contract linked to safety nets that covered the possibility of risk. Collective representation and action machinery gave workers a stronger voice during negotiations with employers.

Three important changes occurred which, by influencing and reinforcing one another, produced a genuine metamorphosis in our society: the rise of contemporary individualism; the transformation of our production systems and management methods; and the Europeanisation of markets followed by their abrupt globalisation. In the economic field, the process of change affected the structures of both demand and supply for goods and services and the market itself. Here, I should like to mention the following points.

Many authors have tried to describe the profound changes caused to our lives in society by what is now conventionally called the rise of contemporary individualism. This means the process whereby the individual's right to live according to his or her personal choices, manifest his or her individuality, enjoy daily life and obtain immediate satisfaction for his or her desires is expressed, affirmed and legitimised. The consequences of this trend are particularly evident in the economic field.

In our western countries we have made great changes in our consumption practices. Wealthier and older on average, we spurn mass-consumption products and try to acquire goods and services matching our tastes and personalities. With more and more information available to us, we have become very exacting with regard to quality, reliability and time limits and no longer hesitate to change our suppliers at the least inconvenience. We have also become more hostile to attempts to manage us. Our desire for independence and self-affirmation makes us allergic to over-uniform organisational structures and to officialdom's attempts, which we quickly regard as unreasonable, to boss us around.

To cope with the new patterns of behaviour and provide more flexible responses to market fluctuations, modern enterprises organise themselves into "networks" which are sometimes external (through subcontracting) and sometimes internal. Hierarchical structures are pared to the bone. This is the result of a new business management and organisation philosophy that saw the light mainly in Japan, combined with the intensive use of new communication technology and remote data processing. Production series are shorter and necessitate constant changes in workstation arrangements. The keywords in today's businesses are flexibility, just in time and total quality. In order to provide more flexible responses to market demands, businesses tend increasingly to concentrate on what they do best. They subcontract work and utilise other specialised enterprises for a whole range of services (staff recruitment, office cleaning, invoicing, accounting, etc.). The bonds between workers and the enterprise, and in particular the duration of those bonds, thus become more diversified (through temporary work, etc.). Teleworking is growing and there is even talk of virtual enterprises.

A third change involves the very concept of paid work, which always implies the receipt of a wage or salary and a definite form of subordination. Nowadays these two concepts are wrapped in vagueness and it is thus becoming increasingly difficult to know whether we are dealing with a paid employee or an independent worker. The relationship with the enterprise, work and other workers is thus turned on its head and feelings of belonging, loyalty and solidarity consequently emerge profoundly changed.

Finally, supply and demand meet today on an enlarged and increasingly global market. We have witnessed the development of a trend towards business acquisitions and takeovers leading to genuinely global enterprises. This process has involved the raising of substantial capital, and short-term business profitability

has become a real obsession, at the expense of other factors such as growth and development. Competition is becoming more frenzied and is reaching out to embrace hitherto unsuspected horizons.

What strikes observers of the international economy is the ever larger and more sophisticated splitting of the value-added chain. A characteristic of more and more multinational firms and global factories is their capacity to break down their products into sub-assemblies that can be produced in different places. Every sub-assembly exists in a competitive global environment; it may find itself replaced by a competitor from the other side of the world or be rapidly relocated. A large number of workers thus become part of invisible production chains that can be split up and instantly reconstituted. Such workers live in dread of losing their jobs without warning.

Workers in direct contact with the market, that is with customer needs and requirements, are given more leeway to work on their own. However, such freedom comes at the price of increased personal responsibility. An enterprise does not seek workers who will just follow orders but expects them to act as independent and responsible individuals. Every worker is thus both independent and required to contribute to the interests of the whole. Certain writers do not hesitate to say that we have entered a period of what resembles a revived feudalism, in which a freeman puts his liberty at the service of his lord. Like a medieval knight, today's worker offers not obedience but allegiance. Numerous international studies report a disturbing rise in stress-linked illnesses.

While one can hardly object to the adaptation of our enterprises to the new economic situation and to the consequent need for flexibility, the formidable questions it raises for our ageing post-industrial societies are clear. The new calls for flexibility are aimed chiefly at facilitating recruitment and dismissal and concern the duration of labour contracts, dismissal notices and terminal allowances, etc. However, they affect what may be called the hard core of the working population that enjoys relative job security and receives the maximum protection under labour legislation. For this reason, certain quarters expect these measures to provide a better spread of unemployment risks in favour of the groups most frequently excluded from the labour market, namely women, young people and the long-term unemployed. For this reason too, flexibility spills over the traditional boundaries of collective relationships and affects the theme of social cohesion that brings us together.

In circles that specialise in labour matters, study of the new balances to be struck between business competitiveness requirements and workers' welfare needs is already far advanced. The European Union report on the transformation of labour law and the future of labour law in Europe, commonly called the Supiot report after its co-ordinator, is an excellent example of this. It puts forward an impressive set of measures which could be applied with profit. I personally see considerable relevance in the proposal to redefine the professional status of

workers so as to guarantee a continuous career rather than job stability. However, replacing static by dynamic security is difficult to devise and even more difficult to apply. It has been continually explained to me that an aircraft is safe because it flies and not because the passengers fasten their safety belts. But persuading people that an aircraft will fly better because all the safety belts have been thrown out requires an outstanding and somewhat cynical communicator.

We see therefore that large swathes of the population in numerous countries of Europe are strongly hostile to excessive changes in this field. How are they to be convinced that such change is necessary? First and foremost, by determinedly pursuing the policy of consultation and negotiation that constitutes one of the main features of our way of life and our European culture. The debate on flexibility should enable each state and its welfare players to define their positions on the balances to be struck between attitudes to dismissals, unemployment benefit policy and the range of measures needed to ensure workers' improved long-term employability. A comparison of these proposals with the social cohesion analysis model proposed by the Council of Europe will undoubtedly move the debate forward and bring points of view closer together without giving rise to pipe dreams of a single model.

However, we are compelled by the new situation to examine the prospects of such a strategy succeeding and the conditions necessary for it to do so. In the new context, we may well wonder whether it is still relevant to speak simply of flexibility. Demands for flexibility have certainly never been so pressing, not only in order to meet the requirements of our enterprises but also to satisfy the needs of many workers for independence and self-affirmation. But what has changed is the background to these demands, which makes acceding to them much more difficult and implementing them a frequently contentious activity.

Because of the new conditions governing economic activity, more and more of us are now living through a situation of general uncertainty. Some years ago, flexibility was a project that could be accepted or rejected. Its terms and conditions could be negotiated. One way or another it was a project in which one took part, if only to reject it. Today, uncertainty is part and parcel of our situation, something imposed on us. Introducing additional forms of flexibility simply increases the area of uncertainty. Our chief problem is to know how to cope with this uncertainty, how to manage it, how to share the burden fairly.

It must first be emphatically pointed out that flexibility is not indispensable for awaking Europe from its economic torpor. Numerous studies have focused on methods of getting out of the crisis by a policy of general excellence. This ambitious prospect was approved by the Lisbon Strategy, which proposed that Europe should become "the most competitive knowledge-based economy in the world". We know what has become of that noble ambition. The risk still exists that flexibility will become de facto the only feasible policy in the short term. This

is yet another reason, in my view, to point out whenever possible that such a choice borders on a counsel of despair and is unacceptable.

It should also be pointed out that we are not all equal in the face of uncertainty. The main burden of this is borne by workers in the sectors exposed to international competition. Workers in this new situation are no longer invited to be “flexible” but have themselves become “flexible elements” of a mechanism in which asynchronously moving cogs are adjusted to one another. They have become the first variable in the process of adjusting business to market uncertainties. We should accordingly welcome the Commission’s proposal to create a Globalisation Adjustment Fund. The proposal is both a recognition of inequality and a proper way of dealing with it.

From the same viewpoint, we should also ask why workers have to bear the weight of this uncertainty much more than in the past.

In the traditional market economy model, the risk of the business is borne by the capitalist entrepreneur, and his profit, which is the payment for that risk, is inherently uncertain. What emerges starkly today is the enormous extent to which this risk has been shifted onto the shoulders of the workers. Besides competition between enterprises and between products, competition is now appearing among workers themselves. Increasingly subject to pressure from the consumer, the worker is himself becoming a sort of entrepreneur. The same applies to the financial risk. An increasing number of shareholders, particularly through the medium of pension funds, are anxious to have high and stable incomes. As soon as profits start to fall, enterprises endeavour to restore their margins by means of mass redundancies. This is deeply shocking to public opinion, especially as far too many recent examples have shown that the leaders of such enterprises have granted themselves lavish protection against these forms of risk.

We are right to ask why we have accepted this transfer of the burden of uncertainty with so little argument. Why are consumer wants so readily satisfied, sometimes at the expense of workers’ more basic needs? Why have we accepted the “financialisation” of our economy? The reasons often put forward have been that it is important to have the capital to bring our enterprises up to European or global standards. Are these reasons as pivotal today? Should they prevail over all other considerations? On this point, the forum came just at the right moment to remove the labour and employment question from the narrow circle of the main interested parties and extend the debate to other groups in society.

I was interested to see that the forum scheduled a discussion about the role of civil society. It is worth remembering that during the first phase of the social struggles that accompanied the development of our economies the trade union organisations constructed innumerable links and concluded alliances with other working-class movements such as mutual benefit societies and production or consumption co-operatives. Which groups in civil society might today be parties

not just to a study but also to definite action in this field? Much attention has been devoted to the civil society theme at the various gatherings in recent years on globalisation. These gatherings involved many people and gave rise to much comment. In my view, they have not reinvigorated the debate so far nor greatly altered the social landscape.

Here, by way of example, are certain questions that could be put. Is it useful and possible to establish a new balance between the demands of our various roles as consumers, savers/workers and pensioners? What means would have to be used? Is social responsibility on the part of enterprises a fruitful route or just a means of obtaining an easy conscience? Does fair trade concern Third World products only? Can ethical investment help with the problems? Should trade unions undertake a broader range of activities and with what other groups should they enter into strategic alliances?

I consider it essential to continue initial efforts to strengthen the social dimension of globalisation. We believed at the end of the last century that we were advancing rapidly towards a strong and balanced governance of the globalising economy. However, we have been bogged down since the year 2000. I trust that Pascal Lamy, the new head of the WTO, who has always shown great interest in these matters, will be able to get things moving again. That is what we must hope.

Furthermore, since we are studying European problems, how can we fail to express our disquiet about the way in which the last enlargement was handled from the labour and employment viewpoints? Much sound and fury have been generated by the Bolkestein Directive. The latter has revived fears of social dumping and the relocation of businesses and jobs. As I write this, European leaders are meeting at Hampton Court. We must hope that they will pay heed to this climate of fear and unfailingly arrive at positions that will reassure European workers.

As we see, the topics present during the first wave of flexibility are still with us today. The main concern is unemployment. We still need a new social dialogue. Other general policy factors have still to be considered. Yet the solutions to be sought are different because the context has radically changed. The need is no longer to introduce a greater or lesser degree of flexibility into a society characterised by rigid structures and legislation but to give meaning to a demand for flexibility in a society whose hallmark is uncertainty: are we moving towards a fluid society or a society where insecurity rules?

A flexible enterprise must be accompanied by a fluid society. Such a society is one whose labour legislation allows transitions from one work status to another and permanently provides the worker with the guarantees he is entitled to expect. Labour law must operate in all work situations, must avoid areas where its writ does not run and not erect impassable barriers to certain categories of

citizen. A fluid society is a society where social legislation gives the worker the necessary security during periods of transition between one work status and another. It is one where, besides the legal guarantees, the worker is assured of the concrete means of moving from one status to another. Particular attention must be given, for example, to opportunities for lifelong learning. A fluid society, finally, is a society capable of genuinely co-ordinating all these factors in the specific interests of the man or woman concerned, who is not just a citizen but also a customer. A flexible enterprise must have its counterpart in a fluid society but this must in no way be synonymous with an insecure society, an accusation levelled at it all too often.

### **3. Flexibility or insecurity?**

There is a third dimension of flexibility which it is our duty to explore. It is a phenomenon highlighted by numerous researchers, which I shall call the erosion of the wage-earning society.

In a recent article, Mr Triomphe, of the European University of Labour Studies, reported a massive increase in the number of persons hiring out their services under civil or commercial contracts. Recent studies suggest that the proportion of non-wage earners in the active population exceeds 20% in some Mediterranean countries. The figures are probably even higher in central Europe. Many of these new workers could undoubtedly enjoy better protection if all or part of the Supiot report's recommendations were implemented.

I fear, however, that the above phenomenon is not wholly explained by a weakened concept of subordination. Besides these new but legal jobs, we have been witnessing the proliferation over the past few years of activities which I would call ill-defined and irregular because of their intermittent nature, the status of those who perform them, the absence of rules concerning them or all three reasons at once. We are gradually entering the territory of an informal economy, which we used to think was the preserve of the developing countries. We are moving slowly, sometimes without our noticing it or particularly wanting to notice it, from the realm of flexibility to that of unfair competition. We are entering a grey, or even black, area where gang masters, people traffickers and the innumerable exploiters of human misery pursue their nefarious schemes.

I raise this point because it has proved difficult and even impossible so far to adopt a common position on the question of flexibility. Perhaps this is inevitable. Perhaps you need a lot of flexibility to talk about flexibility. It is possible that the forthcoming discussion on the European social model which the United Kingdom presidency intends to launch this autumn will reconcile points of view. But failing an ambitious common position, should we not at least reach a common definition – and here I am addressing all Council of Europe countries – of what I would call the frontiers of the unacceptable?

In 1985, when I was Minister for Employment during a Belgian presidency, I proposed to my colleagues that we jointly define a core of fundamental social rights. This proposal resulted in the European Social Charter. In 1994, when I headed the International Labour Office, I did it again when I launched an initiative which was to lead to the adoption in 1998 of the Solemn ILO Declaration on Fundamental Principles and Rights at Work. The Council of Europe could perhaps usefully draw up a joint document on the part of all its member states which would try to confine the various forms of flexibility within acceptable common limits.

You might think that this is just a whim on my part, albeit not a very dangerous one but not very useful either. Experience has taught me, however, that sometimes, when there seems to be no way out, when it appears impossible to get a joint project off the ground, starting modestly from the bottom, setting minimum thresholds a little higher, fixing common rules, enables everyone to feel part of a joint project. This shows a lack of ambition perhaps. But we should not forget that working on such questions necessarily means worrying about the fate of the weakest, of those who live in precariousness and extreme uncertainty. For them, pushing back the unacceptable would represent a beacon of hope.

## **II – Labour flexibility, organisation, workers – A three-dimensional matrix which needs simplification**

*Luciano Gallino, Emeritus Professor of Sociology, University of Turin*

### **Introduction – Labour flexibility: a complex framework**

My aim is to highlight the complexity of the framework within which we are obliged to seek socially and economically acceptable solutions to the problems raised by the spread of labour flexibility. There are four points that have to be borne in mind – or rather four questions or groups of questions – when discussing the effects the new organisational realities can have on workers' welfare because of the flexibility they demand. The four points are addressed below, under four section headings. But before going any further, I should point out that there are many very different types of organisational realities, of flexibility and even of workers. And each type comprises a large number of sub-types.

If we place different types of flexibility on the horizontal axis, X, the various organisational realities on the vertical axis, Y, and the different types of workers on the depth axis, Z, we obtain a three-dimensional socio-technical space – a cubic matrix – where each cell generated by the crossing of the X, Y and Z axes corresponds to a highly specific objective situation. Furthermore, each type comprises a large number of sub-types. So what we have is a space so complex that rather than considering how to minimise the consequences, we should focus on means of reducing this complexity.

What happens to working men and women in terms of job quality, job security, income and, in the last resort, their well-being is closely linked, whether they like it or not, to the particular position in which they are placed on the above three axes. In this three-dimensional space, then, the “cells”, which each describe a different situation, can be very numerous. So in order to answer the questions raised above with any accuracy, we would need to make dozens of replies each time. This is not a theoretical subject: if we are to have any effect on the reality of work situations and change the impact they have on men and women at work for the better, we must consider which specific reality is actually at issue in each case.

In the academic world the definition of labour flexibility is a moot point. We often arrive at the conclusion that “flexibility” is a hold-all word into which we can pack anything we wish concerning the modernisation of labour relations. In my opinion we must reject this interpretation. The fact is that numerous definitions of flexibility exist which are sound, precise and incontrovertible. First and foremost, there are the definitions laid down by law. In the Italian labour market

reform act, for example (Act 30/2003 and subsequent regulations), 48 different types of labour flexibility are listed. If a firm wishes to use the requisite manpower in a flexible manner, it must adopt one or more forms of flexibility from among those described in the law. Then there are the definitions enshrined in industrial branch agreements. *Inter alia*, these agreements contain several definitions of flexible working hours or flexible time. They too are precise and incontrovertible for all the interested parties. And last but not least, there are the definitions of flexible performance explicit or implicit in work organisation in firms. So flexibility is not an all-purpose word: it is a strong concept that covers a variety of very tangible realities in the working world.

This calls for a word of explanation. Within labour flexibility, there is a fundamental distinction, as suggested above, between flexible employment, flexible working hours or flexible time, and flexible performance. Flexible employment depends on the type and duration of work contract, and the distinction does not stop at the difference between fixed-term and open-ended contracts. The duration of fixed-term contracts varies considerably, from a four-hour interim contract at one extreme to a “site” or “project” contract at the other, which can last as long as three years. Between the two lies a whole spectrum of non-permanent work contracts.

Flexible time can also cover a variety of situations. Where working hours are production-related employees may work thirty-five hours some weeks and forty-five or forty-eight hours other weeks, when demand peaks. There is also time banking; shift work, where people work the 6 a.m. to 2 p.m. shift one week, the 2 p.m. to 10 p.m. shift the following week, and the 10 p.m. to 6 a.m. shift the week after that; or the flexible five-day week, where Saturday and Sunday are not necessarily holidays.

Flexible performance has been common for a long time in some professions – firemen and accident ward staff, for example. It has now spread to sectors as different as the automobile industry, fast-food outlets, supermarkets and call centres. Here the performance required can vary, in the course of the day, between periods of minimum concentration and routine tasks, and periods of intense concentration and stressful physical and mental effort. This happens when there are severe disruptions in just-in-time production processes which the worker has to fix.

When the same person is subjected to all three of the above forms of flexibility at once, the personal toll can be heavy. This has often been reported. Take, for example, the case of a worker in the automobile industry who works for a local manufacturer whose firm is a subcontractor of the original equipment manufacturer (OEM), namely the client firm; he has a one-year fixed-term contract which is nearing expiry; he works shifts and on almost every shift he has to work on the OEM's assembly line to deal with disruptions management blames on the parts manufactured in “his” (that is, the subcontracting) firm.

However, the same type of flexibility can affect workers in very different ways in different work environments. At least five different classes of system must be considered:

1. The Taylorist or neo-Taylorist system, where the reference is to the scientific organisation of labour (SOL), ever present in the traditional sectors and, increasingly, in a number of new sectors. There are even variations in SOL: division of work and working hours regulated (still) by the methods office, or a time management computer (TMC), or by just-in-time production. This is the system used in the automobile industry, domestic appliance production, the agro-food industry, the fast-food sector and in call centres, customer service centres and e-commerce.
2. Working systems which require few skills or qualifications but considerable physical effort: building, hotel work, cleaning, road building, harvesting, care-taking, lifting and handling. This type of work is not generally subject to SOL, but rather to inspection during and after execution.
3. Systems where the work consists mainly of supervising the performance and/or the quality of the work done by others. This is the type of work done by foremen, executives and managers. Here we are dealing with an occupational category that has had to become more flexible as a result of downsizing in large firms, namely the tendency to reduce the number of employees in the firm's direct employ, with everything this entails in terms of outsourcing, streamlining in-house hierarchies and the subcontracting of activities in the firm.
4. Work systems that require very high professional qualifications and at the same time offer employees – who remain employees because of the type of contract involved – a large degree of independence and responsibility. This is the case of hundreds of thousands of teachers, doctors, computer experts and researchers in the natural and human sciences, for example.
5. Finally, there is work in what we call the “learning” organisations, where there is little hierarchy, which are capable of rapid reaction, internally highly mobile, and highly advanced in the use of databases and the new information technologies. This type of work system requires about 20% of the staff to be highly qualified, creative, self-sufficient and potentially mobile between firms. Paradoxically, it is these workers who are most likely to reap the benefits of flexible employment and flexible performance, as it is in the interest of the firms they work for to offer high wages in the hope that they will stay.

Each of the types and sub-types of flexibility we have mentioned here can take on different meanings and have very different effects on people depending on the type of system they work in.

A third factor that complicates our three-dimensional matrix is the variations in the definition of people at work. People have an age; a gender; a sector and a level of qualification; an employment history (previous jobs held); a work history (experience of certain types of work); a market which differs with the different variables and is constantly changing with time. The dynamic combination of these variables and their values, in many cases, makes all the difference between an interesting, well paid, stable job and occupational and personal failure. It should be borne in mind that the above variables change all the time, interacting back and forth, and the person's situation changes accordingly. At the age of 20 people may not only tolerate but even prefer flexible time, because of the unusual time slots it opens up, but by the age of 40 the appeal will probably have worn off. On the technical side, ten years ago a diploma in computer technology was like an insurance certificate on the labour market, but nowadays it does not even guarantee a fixed-term contract.

We should now be better prepared to analyse the four groups of questions or macro-questions I mentioned initially.

### **1. Is labour flexibility deteriorating the employees' well-being?**

First and foremost, we can ask ourselves if flexibility necessarily means an intensification of work and lack of consideration for the worker's well-being. This raises secondary questions, like whether intensification causes workers to age faster.

The first thing to note here is that intensification comes in many guises. Work becomes more intense if the worker is obliged to do more in the same lapse of time, that is to work faster; if breaks or pauses – in terms of minutes per stint of duty – are made shorter or abolished; if the body movements and/or postures required for the job gradually become more uncomfortable or tiring; or if the task suddenly requires extraordinary physical or mental efforts.

All the above types of intensification of labour are to be found in numerous production sectors. Most of them, endured over long periods, certainly lead to early ageing in workers. However, these different forms of intensification are not all directly linked to labour flexibility. The most stressful type of flexibility in terms of the intensification of work it entails is flexibility of performance. On the other hand, shortening or abolishing breaks is commonplace in industry and the service sector, but is not specifically a feature of flexible work. Also affected are large numbers of workers on open-ended contracts, with more or less normal working hours, who are not subject to sudden variations in performance.

Even so, a very important, albeit indirect, relationship must be considered to exist between flexible work and early ageing in workers. When a worker is on a fixed-term contract, especially for the umpteenth time, his or her first concern is to have the contract renewed before it expires. This in itself is a source of acute

stress, and stress was never a recipe for eternal youth. To make matters worse, to maximise their chances of a new contract, they must take care not to miss work too often. So even when people are unwell, or tired, or suffer from aches and pains and go to the doctor's for a check-up, they still go to work. Needless to say, this sort of self-neglect year in year out, mainly as a result of flexible employment, is a tangible factor of early ageing.

## **2. Which impact do the organisational transformations have on the labour force?**

A second macro-question concerns assessment of the impact of organisational changes at work on workers' well-being. Occupational sociology maintains that such changes have human costs above all. What needs to be ascertained is whether they are not also a source of opportunities for workers' development.

Before we answer this question, a word about the relationship between organisational changes and labour flexibility is needed. Labour flexibility has been implemented by large firms using production organisation models that have led to three broad results.

The first is the fragmentation of firms: many jobs that used to be done in the same firm are now farmed out to a myriad of outside contractors.

The second is a considerable reduction in the average size of firms. Large and medium-sized firms have done everything in their power to scale themselves down into smaller organisations. Their ideal? A firm with no workers.

Thirdly, there has been widespread scattering of activities that used to be concentrated inside a single firm. The result is that there are now hundreds of firms, employing thousands of workers, working for client firms based hundreds or even thousands of miles away.

How did this new production organisation model develop?

Two trends are identifiable. Starting in the 1980s, a broad tendency to outsource secondary tasks, followed in the 1990s by the insourcing of important primary tasks previously carried out by outside contractors. This process of insourcing primary tasks can account for up to 80% of a firm's total activity in terms of man hours.

However, the demand for labour flexibility can lead to the development of a network of subsidiary firms and external suppliers often scattered over a vast geographical area, making it virtually impossible to circumscribe and supervise closely. The life and survival of a large number of the production units in the network will depend on the orders, appraisals and judgments of an intermediate firm concerning prices and cost-profit ratios. This firm is often a subcontractor, which in turn depends on another, larger firm, which breaks down large orders

received from the OEM and passes them down to the smaller firms in the network.

This has the effect of spreading the risk in such a “capillary” fashion that each unit at SME level, of which there are many because of the insourcing and outsourcing of production tasks by the OEM, is obliged to fine-tune its production flow as efficiently as it can to suit the decisions or requirements of the different levels of subcontracting or sub-subcontracting.

Flexibility of production thus becomes a necessity as no firm has any means of knowing whether it will receive as many orders the following month, or even the following week, as the orders depend on the insourcing and outsourcing of tasks in the hazy perimeter of the system organised by the OEM. In many firms this risk, which encourages flexibility throughout the system, often results in pressure to increase flexible working arrangements.

In such networks the first imperative for any firm is never to recruit anyone if possible, but to try to turn every production order into a series of orders for other firms to execute. In their turn, assuming that they have the same structural problem, these firms try to shift the risk and the need for flexibility further down the chain – namely, onto the workers – or sideways, out to other SMEs.

Intricate networks of contracts and subcontracts are thus created, spread over a large number of firms, and only around the edges is the unity of the production process perceptible. Each component in this intricate mesh, exposed to the systemic risk of suddenly losing an order vital to the firm’s survival, develops a fundamental need to employ as many workers as possible on fixed-term, intermittent or floating contracts, that is to subject the labour force to the constraints of just-in-time production which already apply to every other level and aspect of production.

These organisational changes can be both positive and negative for the workers’ development. On the positive side, the streamlining of hierarchies in large firms, itself a consequence of downsizing, and the demand for rapid and “intelligent” reactions to disturbances of the production flow, present fine opportunities for professional development for all workers.

On the negative side, the high mobility between different firms, which is one of the first effects of flexible jobs, is a powerful deterrent to invest in training. Why should firms invest in training people who will probably not be there in a few months’ time? In any event, both the positive and the negative sides are largely conditional on the particular type of work system and the worker’s personal characteristics.

### 3. How are human consequences of restructurations taken into account?

Thought must also be given to the relationship that exists between lay-offs, structural reorganisations and rising profits. Structural reorganisation does not always take the human consequences into account. Some people argue that fear of flexibility can result in refusal to innovate, with the corresponding “invisible” cost to the firm. Another controversial issue is the relationship between flexibility and production costs. There are managers who maintain that flexibility is the only way to keep production costs down, but this remains a moot point, even in firms.

According to modern business theory – particularly in firms quoted on the stock exchange – the supreme criterion on which management should base decisions is maximising shareholder value, that is the value of the company on the stock exchange. With this aim in mind, one reorganisation strategy that has gained ground in the last twenty years or so is that of mergers and acquisitions.

Adoption of this strategy has been facilitated – perhaps one should say “forced” on us – by a series of laws passed in the United States and the European Union in the 1980s, doing away with numerous legal obstacles to hostile takeovers. The result is that, in order to avoid being easy prey, a company must become more expensive to buy, that is, push up its stock market value. The best way to achieve that is to merge with another firm, or to take it over – often there is little difference.

This is where the equation  $2 + 2 = 3$  (and sometimes a lot less) comes into its own. The effects are visible at two levels. At shareholder value level, where it is a well-known fact that about two thirds of mergers and acquisitions fail, in so far as they result in a firm whose stock market value is much lower than the sum of that of the firms involved. In this respect the mergers of AOL and Time Warner, or Daimler and Chrysler are exemplary. The effect on staff numbers is obviously a decrease following the merger or acquisition, if only to avoid duplications at the different levels of hierarchy and throughout the production process.

Human consequences are rarely taken into consideration in this type of reorganisation. The vast international literature on the theory and practice of the social responsibility of firms is a good illustration. Managers involved in mergers and acquisitions generally try to justify staff cutbacks in the resulting firm by pointing at the general benefits for the economy and for employment of creating a larger, healthier firm. The very high failure rate in mergers and acquisitions – with too many firms becoming smaller and weaker in the long run – does not support the theory that there is any positive fallout for the workers.

Just look at the effect on share prices nowadays when a firm announces massive lay-offs to cut costs. In mid-October 2005, for example, General Motors announced that it would be suppressing 25 000 jobs in its factories by 2008.

Instead of collapsing as it would have done twenty years ago in the wake of such an announcement, the price of GM shares increased substantially.

#### **4. Which possibilities for negotiated flexibility?**

There is often talk of the need for negotiated flexibility and greater concern for competitiveness. This raises the old question of participation, namely different means of involving workers in the changes linked to globalisation. Negotiation – and especially participation – presupposes the existence of an entity sufficiently representative of the workers' interests and, at the same time, vested with sufficient legitimate power to represent them effectively in the face of the firm and employers' associations. That entity can only be a trade union. However, the transformations we have considered above have introduced serious complications into labour relations in the firm, seriously affecting the objective possibility of trade unions representing the material interests and ideals of workers.

For example: if a worker is obliged to leave a firm in a given production sector because the work done by her department has been outsourced, and to go and work for a small firm of subcontractors, doing the same work, the conditions of her contract will almost certainly change. A computer operator working in a chemical firm, for example, is employed under the negotiated conditions governing the chemical industry. However, if she goes to work for an SME which specialises in computer services and operates as such in the telecommunications or information processing sector, her new working conditions will be those which apply to that sector. Trade unions in the chemical sector will no longer be able to represent her. These movements concern hundreds of thousands of workers who pass from one sector and one type of contract to another, while continuing to do the same work.

Another complication can be seen in the very real possibility that in the same firm, factory, office or department there will be people working on a wide variety of different types of "normal" and "special" contracts. In a call centre and on an assembly line, people on permanent full-time contracts work alongside part-time workers, others who are consultants or temporary workers, subcontractors or occasional workers. In Italy labour market reform Act 30/2003 and its implementing Law No. 276 codified 48 different types of "special" or flexible work, according to the estimations of the Central Statistical Institute. Added to these dozens of different types of employment contract are the differences from one sector to another, and the possibility that on the same industrial premises you may find workers from a dozen different firms, based elsewhere but providing and/or producing their goods and services directly on the client firm's premises.

These complications have made it much more difficult for unions to represent workers' material and other interests. The unions are often accused of being unable to represent the "new workers" in today's labour market. More detailed

analysis of the obstacles that have arisen between workers and unions is needed, be it the organisational changes we have already mentioned or the individualisation of labour relations, encouraged in order to keep the unions out.

In our quest to reconcile labour flexibility and social cohesion, we are thus faced with a three-dimensional matrix with too many variables and too many values for each variable to provide an effective solution as things stand – at least without unacceptable human and economic cost. Imagine this matrix as a Rubik's cube. With the Rubik's cube the solution consists of arranging the small cubes so that each face of the whole cube is all one colour. Each face of the large cube is made up of only nine smaller faces, but arranging them in the right order is very difficult. Now, reconciling labour flexibility, organisational realities (and the need to be competitive) and workers' well-being is a problem set in a three-dimensional socio-technical space – a matrix – much more complex than the Rubik's cube.

Before any solution becomes possible, therefore, we must begin by reducing the complexity of the variables on each of the three axes. First and foremost we must realise that the current proliferation of different forms of labour flexibility is not even in the interest of firms. In the real world of production management, which is a much more complex task than producing reports for shareholders, it is more like an organisational nightmare. Many organisational realities are socially irresponsible, as witnessed by the study and theory of the social responsibility of firms in recent years. Efforts are needed at the territorial level or at the branch or value-added production chain level, to restore trade unions' ability to represent the workers and negotiate the various aspects of sustainable flexibility. Finally, workers would be better equipped to deal with flexibility and the new organisational realities – within reason – if their qualifications and the quality of life they were offered were considerably improved through adequate investment in training and intelligent work organisation. Or in other words, investment in work as a permanent factor, in any life curve, of the development of personal dignity and participation in the life of the community.

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## **B – The changes in the structure of labour markets**

### **I – Recent labour market developments – An overview**

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#### **1. Introduction and background to the paper**

In this paper I will address labour market developments in selected European countries in the last ten years, focusing in particular on the latest developments. After the recession years at the beginning of the 1990s, this period has seen relatively stable economic growth in many European countries. However, European countries vary in terms of their economic structures and performance, and this also has an effect on labour market developments.

Recent trends in employment and unemployment form an important general background for understanding labour market developments in European countries. Some distributional effects will also be discussed, such as where the best prospects for job creation are to be found. Some of the most interesting European labour market policy reforms are discussed based on the experiences of Denmark, the Netherlands, Finland, the United Kingdom and Germany. Is there something in common between these reforms, such as a broad combination of economic policy measures, tax-benefit reforms, wage moderation and more targeted labour market policy issues? The main features of employment protection legislation and unemployment benefit systems are also discussed based on developments in some 20 European countries. This is closely connected with protecting employees against the risks of unemployment, social exclusion and sickness.<sup>1</sup> The paper ends with conclusions and policy considerations.

#### **2. Recent labour market developments in selected European countries**

##### *2.1. Employment and unemployment*

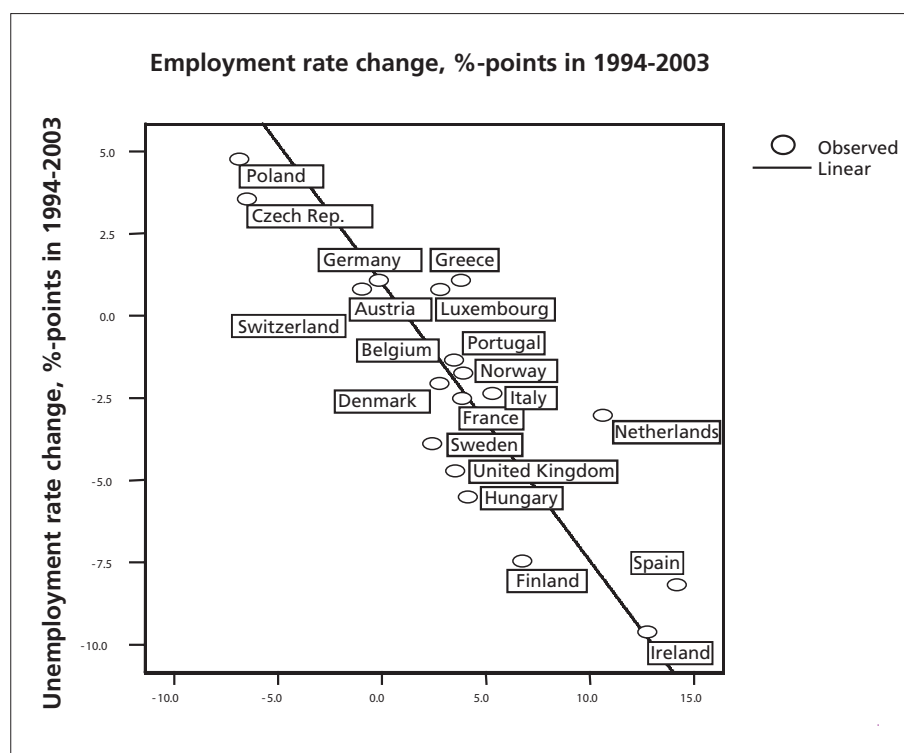
On the one hand, the most positive developments in the last ten years have occurred in Ireland, Spain, Finland and the Netherlands. On the other, the developments seen in Poland and the Czech Republic are clearly on the negative side in terms of employment and unemployment rate changes. The dependence of

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1. *Remain in or withdraw from the labour market ...*, 2003.

these two labour market indicators on each other varies from one country to another. Of the successful countries, Spain and Finland show fairly similar decreases in unemployment rates, but the increase in the employment rate in Spain is actually remarkably better. The Netherlands has experienced strong employment growth, but the increased labour demand has been filled mainly with people other than the unemployed, as labour resources have been very limited in the Netherlands.

**Figure 1 – The relationship between changes in employment and unemployment rates in the period 1994-2003**

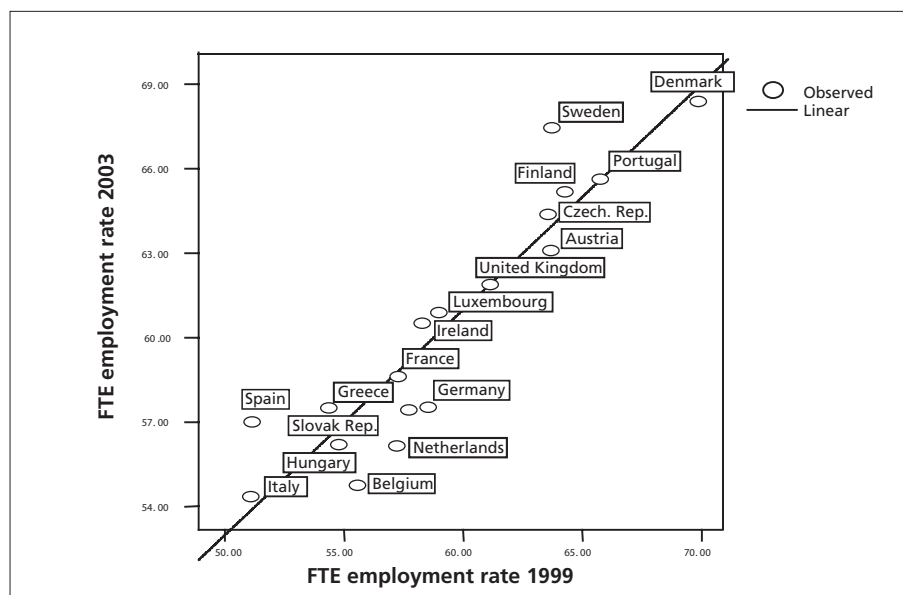


Source: OECD (1996, 1999, and 2004).<sup>2</sup>

In the longer term, labour demand and supply are heavily dependent on each other. In 1991-2001, a cross-country trend line for 21 countries suggests that a one percentage point change in employment is connected with a change in labour supply (labour force participation rate) of about 0.7 percentage points.

2. The regression model is:  $Y=0.19-0.62X$ ,  $r^2=74\%$ ,  $\text{sig}=***$ .

**Figure 2 – Full-time equivalent (FTE) employment rates<sup>3</sup> in 1999 and 2003**



Source: *Employment in Europe 2004 – Recent trends and prospects*.<sup>4</sup>

While the standard employment rates only show the incidence of employment among the working-age population, the full-time equivalent (FTE) employment rates indicate how much work this population really does. Denmark, Sweden, Portugal and Finland achieve high FTE employment rates in both years, while Italy, Spain, Hungary and Belgium are at the other end of the scale. Looking at developments between 1999 and 2003, Sweden and Spain performed best, but Greece, Finland, Ireland and Luxembourg also improved their full-time rates in that period. Belgium, the Netherlands and Germany are furthest below the cross-country trend line. In the Netherlands, part-time employment is especially important.

## 2.2. Distributive aspects

In terms of cross-country means, not much happened in male unemployment or employment in the period between 1999 and 2003. Slight losses in employment are the mean outcome. The situation for females is, however, positive. On aver-

3. The FTE employment rate is defined as total hours worked on both main and second job divided by the average annual hours worked in full-time jobs within the country, see *Employment in Europe – Recent trends and prospects*, p. 268.

4. The full-time equivalent employment rates are for the year 2002 (not 2003) for Ireland and Luxembourg.

age, unemployment fell and, in particular, the female employment rate improved remarkably in a relative short period of time.

Participation in working life in the various age groups has changed over the last five years. As young people were less employed in 2003 compared with 1999, the prime age cohorts between 25 and 54 years of age improved their participation in work somewhat, but the main gains in terms of employment rate increase occurred among people between the ages of 55 and 64. The mean employment rate for 19 countries (unweighted cross-country mean) in the 15-24 age group dropped from 43.2% in 1999 to 41.5% in 2003, but increased from 78.1% to 78.3% in the 25-54 age group. The mean employment rate for people aged 55-64 rose from 41.4% to 44.7% in 2003.

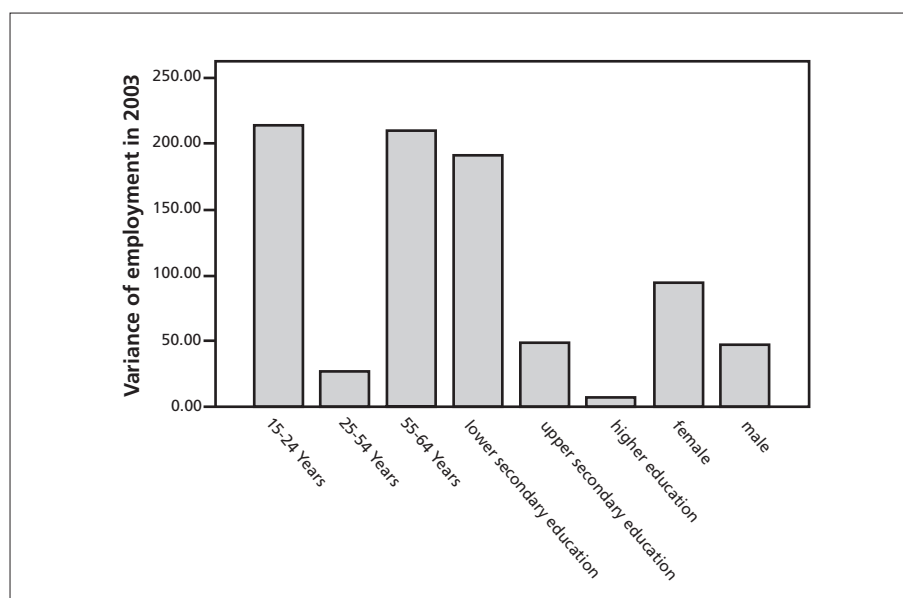
The differences in terms of educational attainment levels in the 25-64 age group are much more modest. During the last few years, however, employment rates have on average risen slightly for people with upper secondary education or less, while the rate for people with higher education qualifications has remained at the same level. It is also clear that people are more employed as educational attainment improves: the employment rates by educational level differ markedly. People with less than upper secondary education had especially low employment rates in the Slovak Republic, Hungary and Poland, while the rates for people with higher education qualifications were low in Greece and Spain compared with other countries. Iceland came top on both counts, but Switzerland, Portugal and Norway also had high employment rates for both groups in 2002. Comparing employment with educational attainment across countries, it is reasonable to take the 25-and-over age group, as degrees are completed at even higher ages in some countries.

Comparing the variances in employment rates for different age groups, educational attainments and both sexes for the year 2003, it is possible to interpret the outcome in such a way that the highest variances across countries would also mean the greatest room for improvement. The variances for the young, the elderly and people with less than upper secondary education and females are higher than for their counterparts. This outcome would also be a starting point for formulating employment policies if equality between different sections of the population is an important policy aim. High employment for highly educated prime-age people is a competitive factor, but there are no major possibilities for significant improvement in this respect.

### **3. Experience with labour market policy reforms**

Labour market policy reforms can be regarded either as one-off measures or as a continuum. Especially in the latter case, the basic ideas and policy goals behind the reforms are important since they are implemented in stages. It is also more

**Figure 3 – Variance in employment rates for various groups in 2003, population aged 15-64**



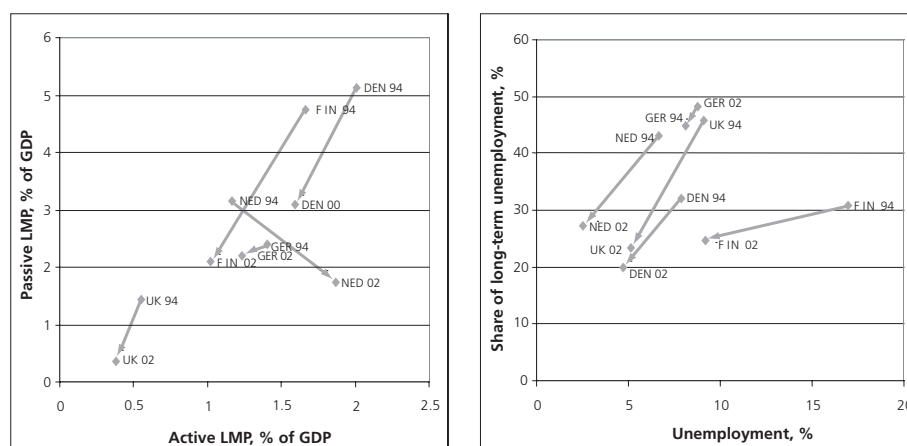
Sources: OECD (2004), and *Employment in Europe 2004 – Recent trends and prospects*.

difficult for the implementers of certain policies to adopt the basic ideas if the reform is of the one-off type than if they are given the chance to adopt them over a longer period of time.

Labour market policy reforms in Denmark, the Netherlands, Finland, the United Kingdom and Germany are discussed in greater detail below. Many European countries have carried through important labour market policy reforms, but in many respects these reforms embody ideas which have been on the policy agenda in other countries as well.

These countries have experienced far-reaching changes both in terms of labour market developments and policies to improve the operation of the labour market. The development in active and passive labour market policy resources in relation to GDP indicates that in these countries, public expenditure is probably more dependent on external shocks in the labour market and expenditure reacts to this rather than showing a clear trade-off between active and passive policies. Only the Netherlands increased active spending on labour market policies between 1994 and 2002 with simultaneous unemployment cuts. The level of unemployment has decreased and its structure has improved in all other countries except Germany, where the situation worsened somewhat between 1994 and 2002.

**Figure 4a and 4b – Expenditure on active and passive labour market policy (LMP) (a, left) and unemployment and long-term unemployment (b, right) in 1994 and 2002, selected countries<sup>5</sup>**



Source: OECD (1996, 2002 and 2004).

Labour market policies can be broadly divided into an active and passive component. The active part can be further divided into public employment services and administration, labour market training, youth measures, subsidised employment and measures for the disabled, while the passive part consists of unemployment compensation and early retirement for labour market reasons.<sup>6</sup>

### 3.1. Reform themes in five countries

In the Danish reform continuum since 1994, the combination of security and flexibility has been clearly present. Needs-orientation, decentralisation and involvement of the social partners are also guiding principles. The cost of active programmes has been criticised as being the highest in the world, and the long-standing unemployment benefit system remains in place. While a large repertoire of passive measures has meant security for people facing unemployment, active measures and the loss of entitlement to unemployment insurance benefits through participation in active measures have created more flexibility. The Danish reforms have created a highly flexible employment relationship and a high level of social protection on an individual level combined with active labour market policies (ALMP).<sup>7</sup>

5. In Figure 4.a, the figures for Denmark refer to the year 2000.

6. Sihto (2004) shows with reference to Finland that it is not always clear what the outcome of active and passive labour market policies is. For example, in the late 1960s and early 1970s the cuts in active measures in Finnish labour market policies meant an end to the existing production and skills structure, especially in depressed regions, which actually improved attainment of the targets of active policies by more passive measures.

In the Netherlands the main reform themes have been wage moderation, social security reforms and active labour market policy reforms. In the EU, part-time work is most widespread in the Netherlands. In particular, this is a predominant feature of female employment. The Public Employment Service (PES) was reformed to create co-operation with the private sector. A policy of flexicurity, which seeks to combine temporary work flexibility with the security aspects of permanent jobs, is a distinctive Dutch feature. Private players have high relevance in the employment services sector.<sup>8</sup>

In Finland, labour market policy reforms were implemented in two waves in 1998 and 2002. The idea was to combine individual measures into a more coherent whole by improving the employment service process, activating a flat-rate unemployment benefit for job-creation purposes, reforming active measures and defining the rights and obligations of unemployed job-seekers. This preventive and more efficient policy approach has contributed towards cutting structural unemployment by preventing prolonged unemployment. Tax-benefit reforms have also contributed to this development.<sup>9</sup>

In the United Kingdom, one idea has been to keep the unemployed in continuous touch with the Employment Service, thus taking advantage of the constant turnover of vacancies. Employment policy covers also the economically inactive. The labour market policies system pays special attention to young people, and also to the long-term unemployed with the New Deal programmes. Young people are not allowed to stay on benefits, but are activated. Evaluations confirm the positive outcome of the programmes. The labour market policies system in Britain emphasises the employment service and job-search assistance more than many other countries do.<sup>10</sup>

Germany started labour market policy reforms later than the other four countries in a difficult labour market situation. The main themes in the original Hartz commission proposals were focused on enhancing market and service principles in the public services, developing targeted services for hard-to-employ job-seekers and improving the organisation and functions of the employment service. Tighter benefit rules were also introduced. Job-broking, labour market information and other employment services have a central role in the reforms.<sup>11</sup>

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7. For more details on the Danish reforms, see Maerkedahl (2001), Westergaard-Nielsen (2001), Auer (2000) and Madsen (2002).

8. For more details on the Dutch reforms, see Fouarge and Baaijens (2003), Auer (2000), Barrell and Genre (1999), Wilthagen (1998), de Koning (2001), van Yperen (2001) and Hartog (2002).

9. For more details on the Finnish reforms, see Räisänen (2001), Arnkil, Spangar and Nieminen (2000), Malmberg-Heimonen and Vuori (2000) and Räisänen (2004).

10. For more details on the British reforms, see Wells (2001), Van Reenen (2003), Blundell and Meghir (2001), and Schmid and Roth (2000).

11. For more details on the German reforms, see *Moderne Dienstleistungen am Arbeitsmarkt* (2002), Koistinen (2003) and Deutsche Bundesbank (2004).

### 3.2. Lessons from the different reforms

To summarise this brief discussion on labour market policy reforms in five countries, the main themes of the reforms are set out in the following table. The table is based on an interpretation of what the central point is in each of the reforms.

**Table 1 – Labour market policy reform characteristics in five countries<sup>12</sup>**

|                                       | Denmark                                                                                                                    | Finland                                                                                            | Germany                                                                                                                          | Netherlands                                                                      | UK                                                                                                                        |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| Changes in unemployment benefits      | X                                                                                                                          | (X)                                                                                                | X                                                                                                                                | X                                                                                | (X)                                                                                                                       |
| Role of the PES                       | X                                                                                                                          | X                                                                                                  | X                                                                                                                                | (X)                                                                              | X                                                                                                                         |
| Activation policy                     | X                                                                                                                          | X                                                                                                  |                                                                                                                                  | X                                                                                | (X)                                                                                                                       |
| Private players                       |                                                                                                                            |                                                                                                    | (X)                                                                                                                              | X                                                                                | X                                                                                                                         |
| Job-search issues                     | (X)                                                                                                                        | X                                                                                                  |                                                                                                                                  |                                                                                  | X                                                                                                                         |
| Target groups:                        |                                                                                                                            |                                                                                                    |                                                                                                                                  |                                                                                  |                                                                                                                           |
| – youth                               | X                                                                                                                          | (X)                                                                                                | X                                                                                                                                | X                                                                                | X                                                                                                                         |
| – elderly                             |                                                                                                                            |                                                                                                    | X                                                                                                                                |                                                                                  |                                                                                                                           |
| – long-term unemployed                | X                                                                                                                          | X                                                                                                  | X                                                                                                                                | X                                                                                | (X)                                                                                                                       |
| – employers                           | X                                                                                                                          | X                                                                                                  |                                                                                                                                  | X                                                                                |                                                                                                                           |
| Rights and obligations                | X                                                                                                                          | X                                                                                                  |                                                                                                                                  |                                                                                  | (X)                                                                                                                       |
| New service models                    |                                                                                                                            | X                                                                                                  |                                                                                                                                  | X                                                                                | X                                                                                                                         |
| Working time/absence from work        | X                                                                                                                          |                                                                                                    |                                                                                                                                  | X                                                                                | (X)                                                                                                                       |
| Co-operation with social partners     | X                                                                                                                          | X                                                                                                  | X                                                                                                                                | (X)                                                                              |                                                                                                                           |
| Connection to broader economic policy | X                                                                                                                          | X                                                                                                  |                                                                                                                                  | X                                                                                |                                                                                                                           |
| Innovative characteristics            | Continued reform, interconnection between active labour market policies (ALMP), benefit reforms and flexible labour market | Active preventive policies, dynamic job-search training, rapid decrease in structural unemployment | Emphasis on “lighter” service methods in labour market policies, labour market information, job placement and preventive methods | PES is partially privatised, combined role of part-time work and benefit reforms | Role of the PES is central and active, which also keeps down the cost of active programmes, and careful targeting of ALMP |

12. For a more detailed comparison of PES services in Denmark, the UK, the Netherlands, Sweden and Finland, see Arnkil, Spangar and Nieminen (2001) or Arnkil (2004). “X” here indicates that the aspect in question is present in the labour market policy reforms, and “(X)” that it is present, but only to a small extent.

All the reforms deal in different ways with unemployment benefits (strong feature in Denmark, Germany and the Netherlands), the role of the PES (especially Denmark and Finland), youth (strongest feature in the UK) and the long-term unemployed. Matters such as activation policy and co-operation with the social partners are also usually present in labour market policy reforms. In most of the reforms, the role of private players (especially the Netherlands), job-search issues (the UK), employers and rights and obligations (Denmark and Finland), new service models (Finland, the Netherlands and the UK), working-time and absence from work issues (Denmark and the Netherlands), and connection to broader economic policy are also relevant themes. Based on this table, there seem to be some common strands as well as some national or occasional characteristics in labour market policy reforms.

For a reform to become successful, a number of things must match with each other. Proper timing, and careful policy design and implementation are some of the relevant issues. How institutions work together and what motivates the implementers, usually PES personnel, to carry out effective changes in their work are also important questions.

#### 4. Incentive structure and links to the operation of the labour market

This section discusses employment protection legislation, unemployment benefits and their links to the operation of the labour market.

##### 4.1. Employment protection legislation

**Table 2 – Strictness of employment protection legislation, sum variable (scores from 0-6)<sup>13</sup>**

|                | Late 1980s | Late 1990s | 2003 | Change between late 1990s and 2003 |
|----------------|------------|------------|------|------------------------------------|
| Austria        | 2.2        | 2.2        | 1.9  | -0.3                               |
| Belgium        | 3.2        | 2.2        | 2.2  | 0.0                                |
| Czech Republic | na.        | 1.9        | 1.9  | 0.0                                |
| Denmark        | 2.3        | 1.4        | 1.4  | 0.0                                |
| Finland        | 2.3        | 2.1        | 2.0  | -0.1                               |
| France         | 2.7        | 3.0        | 3.0  | 0.0                                |

13. The stringency of the employment protection legislation is based on 18 items in three main areas: (1) employment protection of regular workers against individual dismissal; (2) regulation of temporary employment and (3) specific requirements for collective dismissal (OECD (2004), p. 102). This indicator is based on the first two areas.

|                 | Late 1980s | Late 1990s | 2003 | Change between late 1990s and 2003 |
|-----------------|------------|------------|------|------------------------------------|
| Germany         | 3.2        | 2.5        | 2.2  | -0.3                               |
| Greece          | 3.6        | 3.5        | 2.8  | -0.7                               |
| Hungary         | na.        | 1.3        | 1.5  | 0.2                                |
| Ireland         | 0.9        | 0.9        | 1.1  | 0.2                                |
| Italy           | 3.6        | 2.7        | 1.9  | -0.8                               |
| Netherlands     | 2.7        | 2.1        | 2.1  | 0.0                                |
| Norway          | 2.9        | 2.7        | 2.6  | -0.1                               |
| Poland          | na.        | 1.5        | 1.7  | 0.2                                |
| Portugal        | 4.1        | 3.7        | 3.5  | -0.2                               |
| Slovak Republic | na.        | 2.4        | 1.9  | -0.5                               |
| Spain           | 3.8        | 2.9        | 3.1  | 0.2                                |
| Sweden          | 3.5        | 2.2        | 2.2  | 0.0                                |
| Switzerland     | 1.1        | 1.1        | 1.1  | 0.0                                |
| United Kingdom  | 0.6        | 0.6        | 0.7  | 0.1                                |

Source: OECD (2004), see also Nicoletti, Scarpetta and Boylaud (2000), pp. 58-59, and 72-73.

An overview of employment protection legislation is based on consideration of both regular and temporary employment protection. In addition to these aspects, OECD has produced information on legislative aspects relating to protection against collective dismissal.<sup>14</sup>

The general outcome for selected European countries from the late 1980s to the late 1990s is that most countries have relaxed employment protection regulations. Only France had stricter regulations in the late 1990s than in the late 1980s. The southern European countries with the most stringent legislation in this regard all had less legislative protection in the late 1990s than about a decade before. The United Kingdom and Ireland, the countries with the least legislative employment protection, have not changed their general situation. Developments in the last few years after a period of deregulation have been more moderate: from the late 1990s to 2003, the strictness of employment protection legislation has remained virtually the same in most countries, with the most significant changes observed only for Italy and Greece, which now are closer to the legislative protection level of other countries. Of the southern

14. The protection indicator against collective dismissals generally gets higher scores than other forms of employment protection legislation. However, this is an additional form of protection and the requirements in most countries are quite modest. It seems reasonable to concentrate here on the main forms of employment protection legislation (OECD (2004), pp. 102 and 117).

European countries, Portugal has also slightly relaxed its legislation, but Spain has moved a little in the opposite direction. Hungary and Poland seem to be building protective legislation especially for temporary employment. In most of the other countries, regulatory changes have mainly affected temporary employment as well, but mostly in the opposite direction. Temporary work agencies used to be heavily regulated in the late 1980s, but the situation changed considerably over the next decade. Fixed-term contracts were also less regulated in the late 1990s than ten years before. Changes of this kind do not occur in isolation, but are interconnected with other labour market developments. For example, in the early 1990s the PES used to hold a (virtual) monopoly or else a very strong position in many countries, but owing to these legislative and other changes on the labour market, the situation is much more varied and competitive at the moment.

Regarding the prospects for the future, it seems likely that the deregulation seen in the 1990s will pause or at least slow down. The mean value for this sum variable for the above countries went down from an index level of 2.7 in the late 1980s to 2.1 in the late 1990s, and to 2.0 in 2003. What is also important is that the standard deviation between countries narrowed from 1.1 in the late 1980s to 0.8 in the late 1990s and 0.7 in 2003. So, for the countries included in Table 2, employment protection legislation is generally clearly more coherent (also convergent) between many European countries than it used to be. However, as this development is likely to be based on competitive aspects and the globalisation of European economies, which has put more external pressure especially on the most protective countries, the protection levels from the point of view of mobile workers in several European countries resemble each other, at least very generally. The differences between countries are still relatively broad.<sup>15</sup>

#### 4.2. Unemployment benefits

The unemployment benefit systems in several European countries have two components: unemployment insurance and unemployment assistance. Besides these, social assistance and other related benefits such as housing benefits may be payable at least partially because of unemployment. Two aspects of unemployment benefits are of particular interest here: the replacement rate and the duration of the benefit.

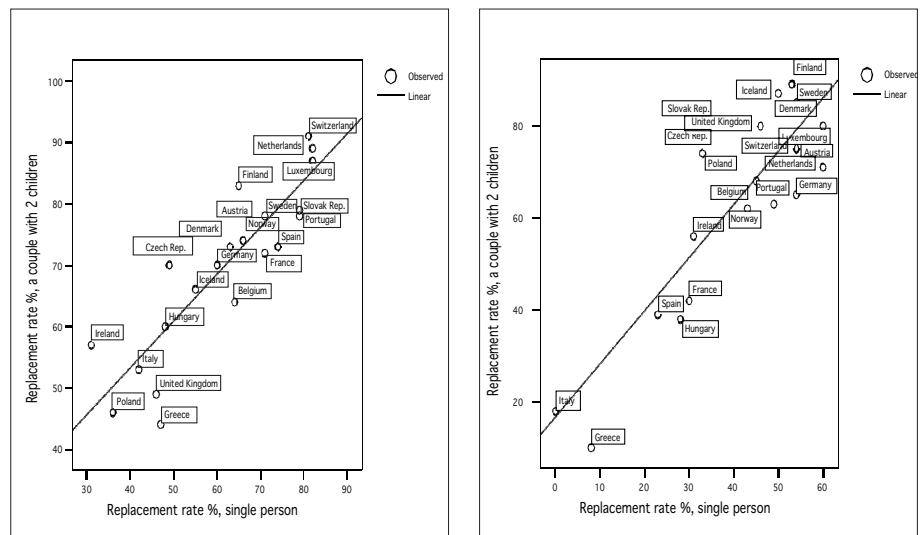
Net replacement levels can be calculated for different representative family types and earning levels. Figures 5.a and 5.b indicate that, taking the cross-country

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15. Cluster combinations for the state of and changes in employment protection legislation indicate that, as regards the state in 2003, the high protection countries are France, Spain, Greece, Norway and Portugal, while the low protection countries are Ireland, Switzerland, Denmark, Hungary and the UK, with the remainder forming an intermediate group (Italy, Slovak Republic, Austria, Czech Republic, Finland, Poland, Germany, Sweden, Belgium and the Netherlands). Between the late 1990s and 2003, significant deregulation occurred in Greece and Italy and slight deregulation in Austria, Germany, Portugal and the Slovak Republic while the other countries have remained roughly the same (however, there is a sub-cluster consisting of Hungary, Poland, Ireland and Spain which have slightly increased the strictness of employment protection legislation).

mean trend line, countries over the line are more “family-friendly” in the event of unemployment than countries under the line.<sup>16</sup> At the start of the unemployment period, the net replacement rates are generally higher than after sixty months of unemployment when unemployment insurance benefits have usually ceased to be payable.<sup>17</sup> At the start of unemployment, the cross-country trend suggests that a 10 percentage point increase in net replacement rate for a single person would on average increase the net replacement rate for a couple with two children by 7.6 percentage points, but a similar change for single long-term beneficiaries would raise the replacement rate by 11.6 percentage points for a couple with two children. Now, it is possible to consider either that governments become more family-friendly after a really long period of unemployment or, conversely, that they set stricter rules for single persons. The answer can be found by studying the simple descriptive statistics.

**Figures 5.a and 5.b – Net replacement rates of unemployment benefits for two family types at APW wage levels at the start of a benefit period (a, left) and for long-term recipients (b, right) in 1999<sup>18</sup>**



**Table 3 – Descriptive statistics for net replacement rates at the start of unemployment or after sixty months' unemployment, two family types at APW wage level in 1999**

|                                        | Mean | Standard deviation | Variance | Variance coefficient |
|----------------------------------------|------|--------------------|----------|----------------------|
| Start, single                          | 61.4 | 15.4               | 238.4    | 0.25                 |
| Start, couple with two children        | 69.6 | 13.5               | 183.0    | 0.19                 |
| Sixty months, single                   | 41.0 | 16.0               | 257.8    | 0.39                 |
| Sixty months, couple with two children | 64.0 | 21.8               | 475.1    | 0.34                 |

The tax-benefit systems for 22 European countries indicate that the unemployment-based net replacement rates for single persons become much stricter in the course of unemployment in relation to a couple with two children. This family-friendliness also means that the economic incentives for job-finding for a family with children are barely greater even after a longer period of unemployment (although the social pressure is probably high, as the economic pressure must be, even if the incentives do not change much over time), but for a single person, the incentives for job-finding clearly become greater over time. Decision makers seem to agree most on the benefit outcome for a family with children at the beginning of unemployment, and the outcomes differ most for long-term unemployed single persons. The systems produce very different net replacement outcomes for long unemployment durations in different countries.<sup>19</sup>

A more elaborate picture of replacement rates applies the concept of the family purse income.<sup>20</sup> The main difference in relation to the net replacement rates presented above is that housing costs are deducted from the disposable income, the idea behind this being that it is difficult to adjust housing costs in the short run at least. These calculations for seven countries show replacement rates that are clearly lower than those presented above.<sup>21</sup> Various labour market mobility patterns are also calculated from the point of view of the incentives. Table 4 shows that for a single person, re-employment even at clearly lower wage levels than before unemployment has high economic incentives.

19. These results should be interpreted with caution, as this kind of "system outcome", especially for longer unemployment durations, is heavily dependent on the implementation of work-tests and other kinds of means-testing of the relevant benefits. The real incidence of long-term unemployment also differs considerably between countries.

20. The calculation of family purse income is based on gross wage or gross benefit minus income taxes and employee's social security contributions, plus cash child allowances, housing allowances and possible topping-up of social assistance, which equals disposable income. After that, housing costs are deducted and the result is family purse income. (*Remain in or withdraw from the labour market*, 2003, p. 19.)

21. The difference is mainly explained by the housing costs.

Benefit duration is another important issue. It is not only the duration of unemployment insurance benefits which affects the labour market outcome, but the whole system of unemployment benefits including unemployment assistance and other related benefits. Many European countries have special rules for older workers, which can be viewed both in terms of social protection of this group of people or as a disincentive for re-employment in relation to younger people. It is also frequently the case that there is no time limit on unemployment assistance following insurance benefits of limited duration, which are usually earnings-related. That being the case, it is important to look at how job offers and active labour market policy measures are provided and how availability for the labour market is tested. A comparison of developments from 1999 to 2004 does not indicate any major changes in maximum durations: stricter limits have been introduced in three countries and another three have extended the relevant periods. As regards assistance benefits, they have mostly remained the same.<sup>22</sup>

Unemployment benefit systems seem to compensate the economic losses due to forfeiture of job with relatively satisfactory net replacement levels in relation to the income from work, at least at the beginning of the unemployment period. The replacement levels usually drop clearly for single persons, but the cross-country mean after sixty months of unemployment for a couple with two children remains almost at the same level as at the beginning of unemployment. Unemployment benefits have both positive and negative effects on the labour market and they do not operate in isolation, but rather in interconnection with other benefits and labour market institutions. Empirical research findings could be interpreted as suggesting that generous unemployment benefits of long duration tend to increase structural unemployment. If the benefits are generous at the beginning of the unemployment period and less generous later, this may, on the one hand, create incentives for good matches and intensified job-search, but on the other, also false incentives for both employees and employers to agree on temporary lay-offs or dismissals.<sup>23</sup>

**Table 4 – Unemployment and work re-entry at two wage levels, single person, initially at APW wage level, year 2000**

| Pays           | Unemployment | Work re-entry,<br>75% wage | Work re-entry,<br>90% wage |
|----------------|--------------|----------------------------|----------------------------|
| Denmark        | 46           | 73                         | 92                         |
| Finland        | 44           | 71                         | 89                         |
| Italy          | 33           | 73                         | 89                         |
| Netherlands    | 60           | 69                         | 87                         |
| Spain          | 63           | 73                         | 89                         |
| Sweden         | 55           | 67                         | 86                         |
| United Kingdom | 29           | 69                         | 87                         |

Source: *Remain in or withdraw from the labour market*, 2003, p. 34.

22. OECD (2002b) and European Commission (2004).

23. *Structural rigidities in Europe*, 2002, pp. 18-21.

#### *4.3. Interconnections between incentives and the operation of the labour market*

This section seeks to identify a preliminary interconnection between incentive structures and the way the labour market operates. Some interesting interconnections between the relevant variables can be found. The increase in the general strictness of employment protection legislation seems to be connected with some kind of increase in the proportion of fixed-term employment in relation to total employment as far as cross-country trends are concerned. This outcome is found for the year 2003 based on 18 European countries. A possible interpretation is that strict employment protection legislation seems to make the labour market react in such a way as to significantly lower the risk of wrong hiring decisions through an increase in fixed-term contracts.<sup>24</sup>

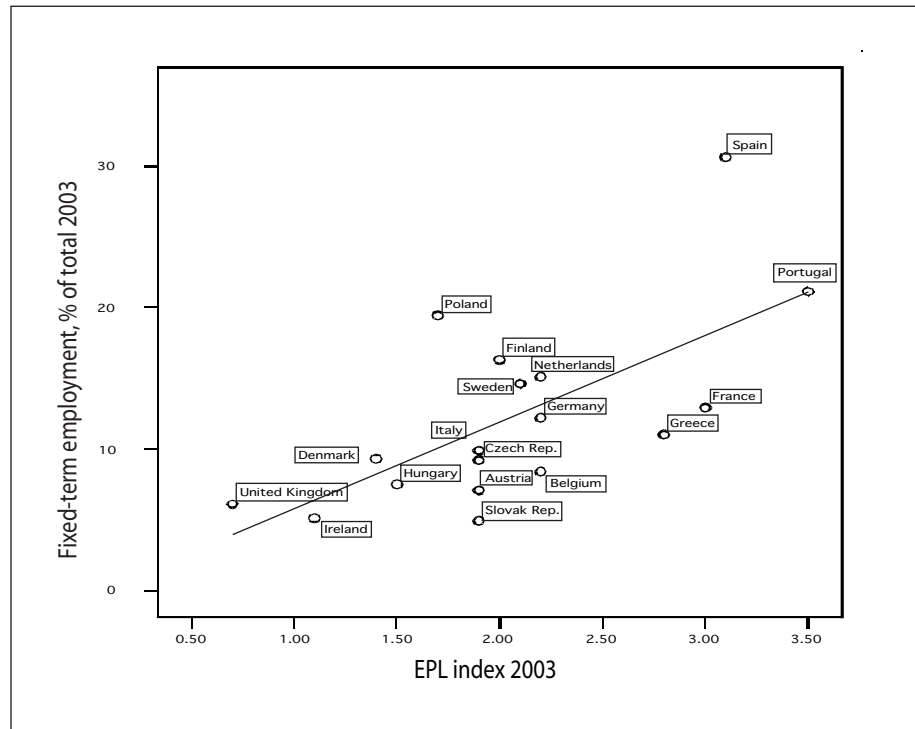
Also, the strictness of employment protection legislation and labour market dynamics seem to be interconnected: the correlations between inflows into unemployment and legislation, on the one hand, and outflows from unemployment and legislation, on the other, have both negative and significant correlations. Employment protection legislation seems to protect existing jobs (and limit the inflow into unemployment), but at the same time reduce the re-employment chances of unemployed job-seekers.<sup>25</sup> Employment protection legislation is therefore likely to improve security for the employed, but also likely to reduce the labour market flexibility necessary for the unemployed to get jobs. However, it is important to bear in mind that employment protection legislation in itself does not solely determine the labour market outcome, but the policy regime and its interconnection with the labour market as a whole. In addition to this outcome, there is a slight indication of a trade-off between the strictness of employment protection legislation and the net replacement rates for long-term unemployed beneficiaries.

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24. Compared with the more focused results of employment protection legislation on permanent contracts and, on the one hand, the incidence of temporary work and, on the other, the transition rate from fixed-term to permanent employment in the OECD (2004, p. 87), the correlation here is much stronger and has higher significance.

25. OECD (2004, pp. 63 and 77).

**Figure 6 – Dependency between the strictness of employment protection legislation and the proportion of fixed-term job contracts in 2003<sup>26</sup>**



Sources: OECD (2004) and *Employment in Europe 2004 – Recent trends and prospects*.

As the differences across countries in Europe are broad and all preliminary interpretations are based on trend lines across countries, it is important to emphasise the sound functioning of the labour market and the relevant benefit regime and legislative regulations concerning the labour market as a whole, as opposed to individual aspects. If the labour market is dynamic, unemployment relatively limited and employment rates for both sexes are high, it is possible to have a high level of social protection. If the labour market is not dynamic and the relevant flexibility mechanisms are missing, social protection systems may turn out to become rigidities in the labour market and a hindrance to re-employment.

## 5. Conclusions and policy considerations

Some conclusive discussion is needed, even if the data in this kind of analysis is not satisfactory and the analysis really remains an overview not going into deeper or

26. Correlation between employment protection legislation index and the share of fixed-term contracts is 0.66, sig.\*\*, N=18.

more focused studies. The results of this paper are based mainly on those Council of Europe member states where comparable data has somehow been available. Despite all uncertainties and limitations, some conclusions can be outlined.

### *5.1. Overall labour market development*

In the last ten years, some countries have been able to improve their employment rates by over 10 percentage points and the reductions in unemployment rates have also been quite remarkable. The development from 1999 to 2003 is, however, more modest in a number of countries. There has been a trend towards weakening male employment rates, but just the opposite for female employment. This outcome is dependent on several factors such as the general economic environment and labour demand, the supply of skilled labour and the operation of the labour market. There is a high dispersion of employment and unemployment across countries. Female labour market participation is rising, which is an important factor for many societies in several respects, together with social security, taxation systems and working-time issues. The full-time equivalent employment rate is a good indicator of how much work the working-age population does.

The trend in employment for older workers over the last five years has been good, but quite the opposite for young people. There seems to be much room for improvement in many European countries in the employment patterns for people with less than upper secondary education, young people aged 15-24, those aged 55-64 and females. For young people, there is usually a clear trade-off between education and at least full-time employment. The room for improvement for the highly educated, prime-age people and males is not especially promising. It is important for policy makers to note that any improvements in the employment record of the weaker groups also mean most in terms of a general increase in employment in many countries. Productivity is of vital importance in securing welfare in the longer run, but if equality is to be achieved in European societies there is a high interest in improving the situation of the most vulnerable groups. This is also in the best interest of the balance of public economies.

### *5.2. Selected labour market policy reforms*

Labour market policy cannot solely bring about a general decrease in unemployment or increase in employment, but it can contribute to the operation of the labour market and take good care of certain more specific labour market problems and target groups. Labour market policy reforms carried through or just being implemented in Denmark, Finland, Germany, the Netherlands and the United Kingdom also represent more broadly many of the important issues which have been addressed in several other countries. Impressive achievements

in cutting unemployment or increasing the employability of certain groups of people are often a result of simultaneous broader policy reforms, but the role of labour market policy should not be underestimated.

The part played by combining benefit reforms, PES organisation changes and activation policies, for certain target groups at least, is an important common strand in the successful reforms. Preventive policies to stop prolonged unemployment and enhance good-quality matching of labour demand and supply at an early stage in the job-search and vacancy period should be emphasised. As preventive policies work, the inflow into long-term and structural unemployment decreases and stocks become more limited. A new active role for the PES, using lighter methods and providing information and employment services for both job-seekers and employers and effective job-search support instead of large-scale active programmes, is probably becoming increasingly important. Budget restrictions further emphasise the role of lighter and more preventive services. Implementation issues are one of the most decisive factors behind good reforms. Many interesting national or occasional characteristics still exist and these should not be underestimated in assessing policies. Labour market policy reforms also have connections with benefit changes and these may turn out to be important alternative options for certain people and form a precondition for the success of labour market policy reforms.

### *5.3. Regulations and benefits*

Labour market regulation should not be discussed in isolation from other institutional characteristics and the policy regime as a whole, but in interconnection with those arrangements. It is not only, for example, the employment protection legislation as such, but the overall regime, the role of benefits and the functioning of the labour market that matters for the labour market outcome. In employment protection legislation, after a period of deregulation in the 1990s, more moderate development is now occurring and more convergent development is to be expected in the coming years. Despite the trend towards some degree of convergence, outliers may cause problems.

The net replacement rates of unemployment benefits differ widely between countries. However, this diversity is not linked systematically to the labour market outcomes, but the regime as a whole is decisive here. Governments seem to agree most on the treatment of family breadwinners in the event of unemployment and much less on the treatment of single persons. For long-term beneficiaries, the replacement rates drop significantly for single persons, but for families with children, there are possible incentive problems as the net replacement rates do not seem to drop over time.

#### *5.4. Policy considerations*

There is still much room for improvement in nearly all European countries in labour market performance. In particular, the population with the lowest employment rates still has much to expect from policy makers. The development of the service sector, education and skills needs improvement. There is also a need for significantly better integration of those people who are currently excluded from the labour market. Simultaneous tax-benefit and labour market policy reforms and the balance between other regulations, such as employment protection legislation, may turn out to produce better jobs for more people. It is highly important that the relevant policy changes are discussed in interconnection with each other and not in isolation, as the modern labour market is a diverse structure with several behavioural effects stemming from separate changes. It is worth mentioning that as far as security and flexibility elements of the labour market are concerned, labour market policy can possibly to some extent replace the deregulation of employment protection legislation by increased activation measures. More active labour market policy is also important as most of the resources are still devoted to passive income support. Passive labour market policies should also be closely interconnected with active policies so that, together, they can improve the operation of the labour market and the re-employment of job-seekers.

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## **II – Developments in labour law, flexibility and social cohesion: the search for new ways of encouraging restructuring and transition**

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### **Introduction**

For nearly twenty-five years, flexibility has been hailed as the remedy required if the labour market is to adapt to changes in the economy. It was argued that it was an urgent economic necessity in the days of Mrs Thatcher in the United Kingdom, as part of ultra-liberal thinking, but since then flexibility has taken on different guises, either as the need to adapt an excessively rigid labour market to changes in the economy, or as the need to increase competitiveness in the market.

The quest for further flexibility under the influence of the European Employment Strategy in the European Union has been reflected in national legislation, in response to economic changes arising from the pressures of competition.

For twenty-five years, one reform of labour law has followed another in Europe, the slogan being variously “modernisation”, “flexibility” or “restructuring”, the purpose of these differing terms being to show that rules of employment can change in order to meet the altered needs faced by employers: the degree to which a change is perceived as satisfactory depends on the political standpoint of each government, however.

The waves of reform in France<sup>1</sup> (2002, 2003 and 2005, and 2004 in respect of collective bargaining) dealing with sensitive matters such as restructuring, which is a symptom of painful labour market transition (Ray, 2006, Vasquez 2006, Moreau, 2006, Fayolle, 2005, Sachs Durand et al., 2004, Auer, Meda, Besse et al., 2005), show the extent to which the links made are essentially political choices. These can also be seen in changes in the rules governing labour law. If we look at changes in labour law in countries such as Italy (especially recently), Spain and Germany, to mention only a few examples, it is clear that the threshold of flexibility set out in labour law in each individual country is the result of what is often a difficult political choice.

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1. For the changes in France, see especially, Ray, J.-E., *Droit du travail, droit vivant*, 14th edition, Liaisons, Paris, 2005, and Jeammaud, A., Pélissier, J. and Supiot, A., *Droit du travail*, 2004, 22nd edition, Dalloz, Paris.

This political complexity means that compromises have to be made between conflicting interests (employers, employees, trade unions and the unemployed), while account must also be taken of the peculiarities of the institutions operating in the labour market (bodies concerned with social protection, unemployment and employment) and of their financial circumstances, by arbitrating between the political and social forces that are heavily involved in any matter to do with flexibility.

Labour legislation is indispensable to the achievement of a social balance. It has come to occupy a new place in the context of global competition (Auby, 2003) and has a structural function in the economy since it is one aspect of the regulation of competition. This regulation of competition is not governed, however, purely by social norms – far from it – but is affected by a whole set of factors including, for example, tax rules and company law.<sup>2</sup> Social costs are merely one piece of the puzzle among the factors governing companies' strategic decisions.

It is therefore not surprising that the main focus of conflicts of interest should have shifted from the traditional area of discussion of general social policy to the technical field of the rules of labour law itself and, in consequence, to the impact of flexibility on employment rights.

It is therefore seen that the goal of flexibility, which varies widely in economic and ideological terms, has been transformed into a call for flexibility in employment rights and labour law.

While flexibility can be regarded as a common aim of different social policies, or even as aiming at convergence, it needs to be defined legally since the interpretation of the term flexibility itself varies widely: it is doubtless because the term is imprecise that it represents a threat to labour law since this very imprecision leads to a questioning of the primary objectives of employment rights. It is also because the concept is imprecise and can be interpreted as a change in the paradigm of labour law<sup>3</sup> that it has led to greater vulnerability among workers: flexibility goes hand in hand with vulnerability where there is no clear statement in the rights granted to workers of the mechanisms of social solidarity that are the bedrock of social cohesion.

It is therefore important, first, to demonstrate that there should be no more talk of flexibility – or even of flexicurity – unless this is expressed in legal language, since

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2. We are thinking particularly of the famous “Delaware effect” in company law; on this point see Muir Watt, H., 2004.

3. Transition from labour law designed according to the Fordist model and along national lines, associated with the exercise of state sovereignty, to labour law having several levels of regulation, based on the networking of companies at global level, complying with new production methods. For more on these changes, see M.-A Moreau, 2006 (to be published).

the fluidity and lack of precision of the term are intended to shift the burden of change and transformation to the individual and away from collective bodies.

In the context of labour law, however, changes must be organised in such a way as to link the norms of labour law to the specifics of the labour market, with a focus on the social responsibilities that they engender, by being based on the economic and social changes underlying the business strategies in the European market that are the source of restructuring and transition.

This necessarily leads to an attempt at fresh thinking, identifying the essential parameters of the changes in the rules of social cohesion: it may be thought that some readjustments should be made to take into account both the local and the transnational dimensions of labour relations, given the global strategies adopted by companies using newly devised legal mechanisms.

### **1. The imprecision of the term “flexibility” and the dangers it poses by changing the paradigms of labour law**

There have been considerable shortfalls in achieving the economic objectives set out in 2000 at the Lisbon Summit because of the absence of any legal interpretation of the terms used: not only is flexibility not defined, but the goal of reconciling flexibility with security leads to contradictions that will be a matter for sociological debate for as long as they remain legally undefined.

The use of legal language in the formulation of economic objectives is therefore needed in order to avoid creating new areas of vulnerability that will threaten social cohesion. This should have specific consequences for decisions about how social norms are created if social cohesion is to remain a goal in Europe.

#### *1.1. The legal imprecision of the term “flexibility” and its consequences*

In sociological terms, the imprecision has given rise to comparative analyses that have produced a typology of flexibilities: a distinction is generally drawn between types of flexibility that are internal to the enterprise (working hours, overtime, part-time working), external (recruitment, dismissals) and organisational (multiple employers, outsourcing, flexible forms of organisation) – including geographical flexibility, and pay-related (Wilthagen et al., 2002, 2003 and 2004).

All these forms of flexibility give employers the potential ability to make adjustments in response to fluctuations in their activities and/or their strategic market decisions.

However, these forms of flexibility are not all based on the same regulatory balance, do not turn on the same techniques and do not lead to the same results. The danger is in fact the same as in the case of flexicurity.

### 1.1.1. The vagueness of the term “flexibility”

The notion of flexibility is a concept that is imprecise in normative terms for a variety of reasons.

The first derives from its semantic plurality: it indicates an objective or policy and does not relate to standards or regulatory techniques. Its ambiguity (Caruso, 2005) is therefore reflected in the many different ways in which it is actually applied, which range from “on call” to “new job” contracts,<sup>4</sup> and from flexible organisation within collective agreements to night or Sunday working arrangements that are entirely unregulated because the state has withdrawn from this field.

Furthermore, the goal of flexibility itself contains paradoxes in the way in which it operates (Caruso, 2005) which both increase the competitiveness of enterprises, encourage adaptability among employees, allow links between working and private life, and, in the case of some forms of internal flexibility, guarantee stability of employment.

These objectives are pursued as alternatives, although they are sometimes combined, as is evident from a close look at the legal measures, which usually have the negative effect of blocking each other: in France, for example, the 35-hour week has provided more free time, but also greater constraints on hours of work, greater intensification of tasks, more flexibility in the organisation of length of working and greater productivity, and in many cases less ability to make use of free time. The introduction of flexibility contains all these paradoxes.

International comparison reveals that these operational paradoxes are also associated with the ambiguity of the concept: studies on part-time working show that it operates in widely varying, ambiguous ways in different countries (Sciarra, Davies and Freedland, 2004): contracts leading to impoverishment and marginalisation centring largely around gender in some countries (France, Italy) or to institutionalised instability of employment for reasons of competitiveness (Spain), while part-time employment contracts represent a way of balancing working and family life in others (Netherlands, Sweden). Depending on the country, it may lead either to the marginalisation of workers or to their integration into the labour market: while the “flexibility” measure is the same, there is nothing in common in its actual impact on workers between Luxembourg (a way of integrating women) and Belgium and France (impoverishment, marginalisation and only sometimes integration).

The proportion of “flexible” contracts varied in 2004<sup>5</sup> from 3% in Greece, 11% in Denmark, 20% in Belgium, 22.4% in Germany and Sweden, and 17% in

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4. And the *contrat première embauche* (first employment contract) which led to massive strikes and which was ultimately dropped by the French government while this volume was being published.

5. Figures published by Eurostat, *Employment in Europe 2004 – Recent trends and prospects*, European Commission and European Social Fund, Brussels, 2004.

France, to 40% in the Netherlands and Spain, together with fixed-term contracts. Their impact on the vulnerability of workers differs widely from one country to another since the use of part-time working not only varies from one country to another (particularly in terms of conditions for a return to full-time working through a reversibility mechanism) but also differs in its cumulative impact with other temporary or casual contracts, especially fixed-term contracts (in France and Spain in particular), or the use of undeclared working.

Lastly, the increase in the scale of self-employment as a feature of greater economic dependency is an extremely worrying trend (Supiot 1999)<sup>6</sup> since it reaches huge proportions in the new countries of the Union and reveals a growth in dependent work totally outside the protection of labour law (Vaughan-Whitehead, 2004).<sup>7</sup>

The combined effect of labour legislation and institutions of social protection and the labour market is thus completely transforming the situation of workers, depending on whether non-working time is associated with another activity or not, with social care, or with support for a move towards full-time working. In all the countries in the Union, however, the principle of equality of treatment imposed by Community Directive 97/81 of 15 December 1997 plays a structural role, even though it has proved insufficient to limit all the aspects of vulnerability engendered by part-time work contracts.

Historical analysis (Fuchs, 2005, Caruso, 2005, and Gaudu, 2003) also shows that flexibility has differed in its techniques, scale and ideology, depending on the country and the period: some commentators agree with Lord Wedderburn (1992) that the discussion focused in the 1970s and the early 1980s on the definition of “inderogeability”, with workers being in a stronger position in countries such as Italy and France than in the United Kingdom of course, while “technical” modifications then spread either by conventional means (in Germany, for example) or through changes to rules of contracts, part-time and agency work contracts, and self-employment.

In the 1980s and 1990s, the main issues raised related to the “dose” of flexibility that it was appropriate to introduce, usually as part of negotiations intended to be “win-win”.

Flexibility was thus controlled and regarded as a necessary but limited evil.

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6 . In 1999 Alain Supiot had already exactly described this shift due to the changes in enterprises and their activities. The fixing of the contours of labour law has since then given rise to many analyses and proposals, in particular by P. Davies, M. Freedland and H. Boissonnat, and to a large literature reviewed in the papers, in particular by Urwana Coiquaud (Montreal, 2004).

7. This is also why the Commission wished, following the report on changes to labour law in the European Union, to place the emphasis in its 2006-10 agenda on the issue of economically dependent work.

These reforms became more significant in the 1990s, when flexibility was used as a response to unemployment. Its function was then transformed and led to a multiplication of non-standard forms of contract, aimed at widely varying target populations as well as at general contractual measures. This led to a worrying fragmentation of the labour force that demonstrated the need to rethink the shape of social protection for workers (Supiot, 1999). The negotiation of flexibility led to reforms in employment rights so as to allow not only faster decentralisation of collective bargaining but also the introduction of mechanisms allowing derogation both from the favour principle (France, Germany) and from the national threshold set for “inderogability” through various formulae of permissive clauses (Germany), derogation agreements (France), and semi-compulsory agreements (Denmark). In all cases, it was the structures of negotiation that were made more flexible in order to allow adjustments by the social partners, frequently in the short term.

The most recent period reveals a clear shift towards a quest for flexibility not as a means of responding to changes but as an ideological choice (Caruso, 2005, on reforms in Italy).

The ideology of flexibility, first introduced by Mrs Thatcher in the United Kingdom, led to calls for deregulation. No economist has produced proof of the need to interpret flexibility in terms of deregulation, as the British example has neatly shown (Hepple, 2005).<sup>8</sup>

Once again we are witnessing a major offensive to deregulate labour law in many countries, sometimes based on differing doctrinal or disciplinary approaches.

However, analysis of changes in labour law in Europe shows strong resistance on the part of employment rights to complete deregulation.<sup>9</sup> Overall, the foundations of employment rights, thanks in particular to the constitutional recognition of social rights and an increase in the power of international standards, some of which have been applied effectively (European Social Charter of 1961, ECHR) and some not (ILO Declaration on the fundamental rights of workers of 1998, European Union Charter of Fundamental Rights of 2000), are helping to maintain protection for workers without any serious changes to their employment

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8. Bob Hepple draws on the opinions advanced by other authors such as C. Barnard, Paul Davies, Lord Wedderburn. For more on these developments, see M.-A Moreau, 2006 (to be published).

9. Annet Jager, Claire Wallace and Barbara Haas (2004) carried out a comparative study of the law in eight countries (Netherlands, Sweden, UK, Czech Republic, Hungary, Slovenia, Bulgaria, Romania) and showed that there were four types of flexibility and regulation: either flexibility through complete deregulation (UK), flexibility organised in/for a highly regulated market (Netherlands, Sweden), a strong quest for flexibility but in a market controlled by a decentralising state (Hungary, Czech Republic), and a state-controlled labour market with strong regulation but *de facto* unregulated deregulation (Romania, Bulgaria).

rights (Sciarra, 2005). The key place of fundamental rights in Europe, despite their widely varying expression in different sources of law, does not have the merit of clarity but does reinforce fundamental rights (Moreau, 2005b).

Nonetheless, a strong trend can be seen in all countries towards the introduction of flexibility mechanisms of varying impact, scale and techniques, with the common purpose of reducing collective protection and making employment relationships more personal. This move towards individualism has been reflected in an expansion in temporary and non-standard contracts, marginalising the most vulnerable workers. The European employment report published in 2004 clearly shows a rise in the number of vulnerable, unskilled people who find it more difficult to return to the labour market and are barely touched by skills training and retraining policies.

Hence, whatever the approach taken to flexibility, it is clear that the term – because it is imprecise – allows a wide range of legal interpretations which threaten the most vulnerable populations: all the studies on employment in Europe reveal that the gaps are growing between the genders, between the generations, between skilled and unskilled workers, and between workers established in the labour market and those who have not found stable employment.

A remarkable recent study (Auer and Cazes, 2003) shows, however, that the comparative figures for duration of jobs in Europe and Japan has not changed greatly (on average ten to eleven years, as against six to seven years in the United States).

On the other hand, there is growing polarisation among the most vulnerable populations which is increasing instability of employment for women, young people and senior citizens, even though these trends are counterbalanced at the same time by measures targeting them and movements in the labour market (such as greater activity among women and a sometimes steep rise in the level of their skills).

This empirical study is similar in its findings to the study of changes in employment rights in the 15 countries of the European Union (Sciarra, 2005): up to now, employment has not given rise to widespread deregulation in Europe, but the gaps are growing, threatening social cohesion (Supiot, 1999).

This fragmentation among workers results from changes in contracts of employment, in favour of greater economic dependency and impoverishment at work (“working poors”) and a breakdown in collective solidarity that is leading to the dismantling of collective protection in some countries and sectors.

These “new” forms of vulnerability result from the lack of precision in terms and from the different ways in which flexibility is expressed.

The same might be said of the concept of flexicurity, which is nonetheless put forward as the policy antidote to the unfortunate effects of flexibility.

### *1.1.2. The danger of the concept of flexicurity*

“Flexicurity” is a new term which has been thought up to meet the intentions of the Lisbon European Council of 2000, with a view to reconciling employers’ demands for flexibility and workers’ need for security in the market: it is defined as a policy strategy “that attempts, synchronically and in a deliberate way, to enhance the flexibility of labour markets, work organisations and labour relations, on the one hand, and to enhance security – employment security and social security – notably for weaker groups in and outside the labour market, on the other hand”.<sup>10</sup> Doctrinal analysis of the type carried out by Gunther Schmidt (Schmidt and Gazier, 2002, and Gazier, 2005) has identified the requirements for the creation of a transitional labour market as being the need to promote career choices for individuals at such times of transition, the fostering of solidarity over responsibility for social threats through redistribution programmes, the need to make specialised measures effective, and the need to achieve co-determination by those involved at local, company and regional level.

The aim is that different combinations of security should correspond to the different types of flexibility: security of employment in the sense of relative certainty of keeping the job in question for a sustained period, security of employment in the sense of employability (hence of being able to find a job (again) in the labour market), security of income, protection against risks, and a combination of rights with a substitute income.

The range of combinations should obviously be wide enough to provide social bodies, trade union organisations and the members of the civil society concerned who are at social risk<sup>11</sup> with a variety of transition arrangements that meet the requirements of both employers and workers in a given national labour market.

In terms of doctrine, the approach is of great interest, but it must still be expressed in terms of rights in order to avoid the pitfall of creating new “pockets” of vulnerability for various reasons.

The first arises from examination of flexicurity policies: the main examples are from the Netherlands and Denmark, which have been able to devise flexibility schemes offered to employers which still guarantee workers significant opportunities to rejoin the labour market: Danish legislation (Madsen, 1999 and 2004) allows employees to be dismissed at very short notice, but they are then taken care of by the social security system, with a generous guaranteed income and very

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10. Wilthagen and Tros, 2004, “A policy strategy that attempts, synchronically and in a deliberate way, to enhance the flexibility of labour markets, work organisations and labour relations on the one hand, and to enhance security – employment security and social security – notably for weaker groups in and outside the labour market, on the other hand”.

11. The unemployed, the retired, voluntary associations and NGOs.

active labour market programmes. These reposition workers in the labour market within the short term, so that there is a high overall rate of job mobility (30%).

This mechanism, which is sometimes described as the Danish “miracle”, was essentially introduced through the Danish model of occupation-based negotiation, which is based on a high rate of trade union membership (80%) and a unique corporatist culture.

Under the “polder model” in the Netherlands (Van Oorshot, 2004), flexibility is based on part-time contracts that redistribute work and arrange for income transition so as to allow working life to be combined effectively with family life. Significant modifications making temporary agency work more flexible have also been introduced by freeing up the conditions under which these agencies operate, while allowing for permanent contracts for workers. The key factors have been not only the introduction of these measures through collective bargaining but also their articulation with family policy. As a result, these measures have offered workers (mostly women workers) greater security, which has generally been warmly welcomed.

At the opposite extreme, the measures taken in Spain (Valdés Dal-Ré, 2004) tripled the number of temporary contracts during the period from 1984 to 1993 through blatant deregulation: reforms were then undertaken under the social pact of 1997 and the European Employment Strategy of 2000 to limit the scale of temporary employment by introducing equality of treatment with full-time workers and encouraging voluntary work by permitting a return to full-time from part-time working. Guarantees relating to the organisation of part-time workers’ hours of work were removed in 2000, however, in order to strengthen the flexibility offered to employers in managing their businesses.<sup>12</sup>

The Spanish example shows the strength of the conflicts of interest affecting the regulation of temporary contracts in a pluralist trade union system and the difficulties associated with achieving a balance between security and flexibility.

The transfer of “good practices”, which is the motto of the European Employment Strategy, also has its drawbacks since every observer of the Danish and Dutch models stresses the opportunities that the social partners had to find ways of reconciling and achieving a compromise between flexibility and security because of the strength of the social pacts, the way in which occupational relationships are managed, and the high level of trade union membership. While this may be a useful model for reconstructing the social model (Lefebvre and Meda, 2006), the situation is far from obtaining in other labour markets. The transfer of Danish and Dutch “good practices” is therefore problematic (Moreau, 2005b).

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12. Even though the 2003 inter-occupation agreement on collective negotiation made reference to the principle of the need to reconcile flexibility and security.

This is illustrated by the French example<sup>13</sup> of the measures taken in August 2005 (Dockes, 2005) for “job creation” contracts, which were supposedly inspired by the Danish model. “Job creation” contracts are available to small enterprises, which may within the two years of the contract terminate it at any time without reason at very short notice.

The Danish government has opted for measures offering total flexibility for SMEs. The system has some guarantees but does not have a real transition strategy nor one specifically addressing training, re-deployment and the acquisition of new skills.

“Job creation” contracts were not only subject to no negotiation but were also never debated in parliament, which delegated its powers to the various levels of government by statutory order.

The complete absence of discussion with any partners means that the employment contracts are deregulated (no reason given for dismissal, no system of protection and very short notice) and that there is a deliberate absence of collective protection: the use of these contracts is restricted to enterprises with fewer than 20 paid staff, in which there is generally no trade union representation. Employees, who may be thrown away like “Kleenex”, do not count as staff for the purpose of calculating the threshold for collective representation, which means that enterprises may take on more staff without risking exceeding the threshold.<sup>14</sup>

SMEs can thus be expanded, without limit as to number and with no trade union control, without any of the guarantees that apply to fixed-term or agency contracts which replace permanent posts.<sup>15</sup> It should be added that checks on non-standard contracts by the employment inspectorate in France are not sufficiently numerous to be truly effective, which allows unauthorised and illegal forms of flexibility to spread.

In a move towards a system of flexicurity, some guarantees of redundancy payment and of access to unemployment schemes are given to workers, but no real guarantee of transition through possible reskilling or retraining is provided in the labour market, nor is a transition system provided for them which offers income incentives.

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13. “Job creation” contracts (Dockes, 2006).

14. A staff representative may nonetheless be appointed as a trade union representative where there are between 10 and 50 staff. But it does not become possible to set up a works council if the enterprise goes beyond 50. This provision avoids training costs. Such a situation will probably be rare. The government is assuming that growing SMEs will need to offer permanent contracts to most of their staff.

15. It is enough to appoint a succession of staff every two years minus one day, or to wait three months before taking back the same staff in a by now familiar game of musical chairs.

Good practices and the imprecise nature of the term thus make it possible to alter the rules of labour law by deregulating it in the name of flexibility and even, as in this case, flexicurity.<sup>16</sup> This affects the most vulnerable workers (unskilled young people and women), accentuating what has been called the “Mathieu effect” on recruitment.<sup>17</sup> In this case, employees taken on under a “job creation” contract are deprived of the most basic guarantees of respect for their work since they are not told the reason for their dismissal from the enterprise.<sup>18</sup>

In conclusion, there is an obvious need to set out the purpose of a job in terms of the language of rights, since jobs will otherwise lose their quality and security.

This need to reintroduce legal guidelines, focusing on specific rights, into the mechanisms of the European Employment Strategy and European policy will provide a minimum guarantee of indispensable social cohesion.

### *1.2. Consequences of the expression of the aims of flexibility and security in terms of rights*

A number of options are possible.

If the principles outlined by Gazier (2002 and 2005), Auer (2001 and 2003) and Wilthagen (2003 and 2004) are adopted, which fall within the doctrine of “reflexive law” (Rogowski and Wilthagen, 1994), discussion between all those involved should allow a framework to be created that will provide a procedural guarantee of achieving a balance between flexibility and security.

Such discussion should be the primary requirement.

It goes beyond the mere use of collective autonomy since it involves wide participation by all those bodies in the civil society which have a stake in the labour market. It is relevant to point out, however, that despite the diversity of systems of collective bargaining in Europe, they have in common that they recognise the normative function of negotiation,<sup>19</sup> which may provide a shared basis for the creation of transitional labour markets.

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16. This reference to the Danish model was presented by Mr Borloo at the forum as a major plank in government policy.

17. Gazier, 2005. The “Matthieu effect” is well known in the context of social security (Dupeyroux, J.-J., *Droit de la sécurité sociale*, Dalloz, editions from 1970 to 1990) but also affects the most severely disadvantaged in the search for employment: they are treated even less well than the more fortunate, as in the Gospel story, in finding the path to heaven. Here, however, we are dealing with earthly transition.

18. If it is inconceivable that a child should be punished by being excluded without being given a reason, why should employees not be entitled to this fundamental mark of respect for the individual?

19. Sciarra, 2004.

An attempt to find common ways of protecting “inderogeable” security in terms of basic protection for workers may also be at the heart of flexicurity: respect for the individual expressed in the form of providing information about the future of the job, clear arrangements for compensation payments for dismissal (where these are “converted” into social support schemes), and creation of “bridges and pathways” between permanent employment and temporary jobs (Zachert, 2004).

There may be complete compliance with the fundamental rights of the European Social Charter, and in particular with the rights relating to education and training, in order to expand individual capacities (“capabilities” in the sense of A. Sen) (De Schutter et Deakin, 2005). In the European Union, compliance with the Charter should be at the heart of all the measures taken as part of the European Employment Strategy because of the positive obligations already imposed by Community legislation (De Schutter, 2004). Particular emphasis should be given to Article 30 of the Charter, which will guarantee a minimum level of security in the case of unfair dismissal.

Given the shifting aims of economic policy, guarantees of fundamental rights can, if imposed effectively on the legislature and the judiciary, provide a bulwark against the spread of further forms of vulnerability (Moreau, 2005a).

In all cases, it is a requirement that the aims are written in legal language so that there can be no slippage of labour law towards law based on the management of business to meet economic requirements (Supiot, 2005). The ideology of expanded flexibility leads to this, as well as to the norm of work being reduced to a mere object which serves economic performance (Muir Watt, 2004).

All employment rights in the industrialised countries have been forged out of the need to create legal rules, through the combined effect of state intervention and/or the use of collective autonomy, as opposed to the contractual model of common law based on the equality of the contracting parties. The basis for employment rights relates to the need to protect the employee in the light of the power of the employer. Although the role of labour law has changed, and it is undeniable that social norms have a part to play in achieving an economic balance, flexibility must not be the pretext for a change of paradigm from labour law to the law of the economy or that of the market.

This need for protection for workers, and especially for the most vulnerable workers, through social employment rules, leads on to reconsideration of the demands of social cohesion.

## **2. Revising the notion of social cohesion: some suggestions for discussion based on labour law**

The fragmentation and break-up of the labour force, and the dispersal and even disappearance of collective identities, and the many different assaults on social solidarity, are an attack on the notion of social cohesion.

However, social cohesion is more than an idea in Europe, being enshrined in the European Social Charter of 1961 through the promulgation of fundamental social rights. Within the European Union it is an aim of the treaty that is to be achieved in the long term through the introduction of various forms of collective solidarity.

The most obvious symptom of the fragmentation of social cohesion in Europe is currently without doubt restructuring, which urgently requires transition and adjustment mechanisms to allow enterprises to pursue their activities in the European market, to preserve jobs, and to organise the transition of workers to new jobs.

Because enterprises are mobile (closing or relocating works), their economic activities are changing (through specialisation or renewed concentration on core functions), and post-Fordist production is being organised in different ways (networked enterprises, outsourcing), restructuring clearly means that new approaches will have to emerge (Mucchielli, 1998; Murray et al., 2004).

The introduction of transitional labour markets is currently one of the most structured responses in the field of social policy (Schmid and Gazier, 2002; Barbier and Nadal, 2000; Wilthagen, 2004). It is associated with economic analyses revealing the need to foster innovation as a source of competitiveness (Wim Kok report) by not confusing the processes of deindustrialisation and relocation (Lorenzi and Fontagné, 2004) and basing the quest for adjustments on the changes needed in the light of the redrawing of the map of economic activities on a world scale.<sup>20</sup>

But it also requires amended legislation to take account of the new circumstances of these developments and changes in the situation. Legal rules must adapt to the new powers that may be exercised by employers within the European market (Moreau, 2005a, and Sachs-Durand, 2004) and outside that market.

These developments rest on a simple doctrinal idea: transition and adjustment, like the organised counter-forces working on behalf of workers must be established/re-established in accordance with the specifics of employers' mobility and range of powers.

If power is transnational, the mechanisms set up in response must also be transnational.

This therefore means restoring a balance between the terms of the employment relationship, by making allowance for the mobility of enterprises and the international division of work (Pottier, 2003):

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20. All these ideas have been put forward either in the articles cited in the bibliography by Moreau (2005), Moreau and Trudeau (2000), or in a publication in preparation (2006) on social norms, labour law and globalisation, forthcoming, September 2006.

- if enterprises are operating transnationally and globally, the legislative response must be at the same level: transnational and global;
- if employers can take action immediately or at least at very short notice, the responses put in place by the courts or the social partners must take effect within the same length of time.

The relationship with time and place has been profoundly changed in the current economic context. These changes simply have to be transposed to the legal context.

The expression of legal rules and/or economic aims in legal language, incorporating this need for a matching balance, may lead to a change in the effective purpose of social cohesion. An attempt must therefore be made to incorporate this transnational dimension into legislation and to allow the responses given to workers to be made at the local and regional level in the context of this transnational and global dimension of economic activities.

### *2.1. The quest for transnational responses*

This quest for transnational responses is proceeding slowly: it is lagging behind the development of national legislation in the field of labour law and the ways in which public policy and trade unions traditionally act at national level.

However, these national actions have their limitations when faced with the volatility of economic and financial activities.

Restructuring is particularly symptomatic of the need to see the phenomenon in its transnational dimension since a decision to restructure is related to at least some degree to companies' strategic ability to reposition themselves in accordance with the comparative advantages which it offers in the global market (IRES, 2004, Raveyre, 2005, and Zimmermann, 2005): studies of restructuring in the automobile market, for example, clearly show how the restructuring of a subsidiary in the European and international market coincides with the need to minimise the social costs of extremely specialised production, assembly and market penetration, which lead companies to choose a variety of locations (Gorgeu and Mathieu, 2005), and the same applies to innovative sectors, which have to combine creativity and innovation in developing their strategies. Analyses of the strategies adopted in the global market show the sophistication of their response to the specific requirements of activities (costs, creativity, innovation, market penetration), which will not tolerate a simplistic, national approach.

This need for a transnational approach may also be seen as a response to the decline in the powers of the state in a globalised world and to the rise in the strength of new civil society players (see in particular the line of argument put forward by Teubner, 2002).

From a number of theoretical standpoints it is necessary to accommodate the transnational dimension:

Primarily at the level of worker representation, where transnational representation is the only way of recreating a strategy to meet that of transnational employers, a move to a transnational dimension proves necessary in every case, whether this be the handling of information about a multinational group, the visibility of the working conditions within the group on which decisions about staff cuts and relocation are made, or measures to deal with restructuring. Examples of restructuring, such as Eurotunnel, Metaleurope, ST Microelectronics and, in the past, Renault or Michelin, demonstrate that separate action at the national level creates breaches in social cohesion in the European market (Jobert et al., 2005).

Certain ways of integrating the transnational dimension have been found: primarily, of course, the ability of European works councils to respond to this dimension.

The powers and ways of working of European works councils differ widely one from another since they reflect the agreements made with management. They can, however, obtain economic, financial and social information about groups operating across the Community, they have an extremely pertinent knowledge of conditions of work in the group, and they can co-ordinate the parties involved in the group at transnational level. There are highly successful examples of transnational action by European works councils, which have also given rise to new legal strategies (Bethoux, 2004): procedural co-ordination of restructuring (Alstom, Eurotunnel), and negotiation of agreements/conventions on transnational issues (Arcelor). European works councils have also proved to be key players at the international level in the negotiation of agreements by international trade unions (international framework agreements). To date, 42 agreements have been signed.<sup>21</sup>

European works councils are without doubt “facilitators”<sup>22</sup> which permit national and international players to work together across borders (Daugareilh, 2005, and Bourke, 2005).

Recognition of the transnational dimension has led to greater diversity in methods of regulation because of the limitations of the traditional rules of hard law at national or sometimes regional level within the European Union.

Since enterprises work across borders, the rules best suited to them must also work across borders (Moreau and Trudeau, 2000).

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21. Particularly innovative and relevant agreements have been signed in 2005, especially with EDF, Lafarge and with Renault at the end of 2004, Moreau, forthcoming, 2006.

22. The expression is used by Ronald Bourke. European works councils are not always involved in negotiations, however, since they have no legitimacy at the global level.

The expansion of soft law rules may be seen in the following way: not only are they created voluntarily, leaving enterprises to decide whether to comply with them or not, whether to implement them in practice or not, but they can also have transnational force.

The unprecedented growth of codes of conduct in transnational enterprises shows that the law is changing, allowing workers' fundamental rights to be truly respected (Sobczak, 2004a and 2004b), as is reflected in the ILO declaration of 1998 in countries in which these rights are not respected or recognised (Trebilcock, 2001, and Servais, 2004).

To the extent that enterprises would like to present a social image of their activities through these codes of conduct, they have become essential ways of promulgating workers' rights in some countries.<sup>23</sup>

Thanks to codes of conduct, it can be seen that local bodies have acquired new levers for taking action, where previously they had none (in China or Guatemala, for example), or that such levers are now being created (countries recently joining the Union). In enterprises which make codes of conduct their spearhead because they need to avoid campaigns criticising poor working conditions among subcontractors, active policies have been introduced to check that the codes are complied with (Gap, Nike and Ikea, for example).

In terms of their transnational effect, codes of conduct have brought about new synergies (Blackett, 2004): through negotiation of framework agreements for international professional secretariats (Daugareilh, 2005), in the context of European social dialogue<sup>24</sup> and in that of "occupational associations" (particularly in American corporations), and through creation of international control and evaluation procedures and schemes to support subcontractors. This positive code of conduct approach does have a negative side, however: codes imposed unilaterally by companies in disregard of fundamental rights, especially of collective bargaining (the "self-service" principle, to borrow the expression used by Alain Supiot), lack of effective checking, fabricated statements by management where codes are scarcely applied if at all, subjugation of subcontractors as part of a new transnational economic dependency, etc. (Moreau, 2005b).

The area of codes of conduct urgently needs a minimum legal framework, which should be drawn up with the participation of a workers' representative at transnational level at the very least (a transnational rule of procedure) and compliance with the 1998 declaration in the codes.

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23. Especially in free trade zones (Blackett, 2004). According to the ILO, there are currently 17 million in 40 countries working in free trade zones. Almost half of them are in China.

24. In the last five years a number of sectors have negotiated European agreements, particularly in the leather and sugar sectors – report on industrial relations in Europe, chapter 3, available at the website [http://ec.europa.eu/employment\\_social](http://ec.europa.eu/employment_social)

At present, more than 140 countries are bound by the declaration. But a link still needs to be made between this mechanism of international soft law that applies across states and the soft law created by enterprises themselves. The European Union currently refuses to create a basic legal framework for codes of conduct, preferring a “good practice” approach, which is greatly cherished by employers.

The soft law approach has its limitations since it does not provide for coherence between rules: there is no coherence in accepting that codes of conduct may be drawn up by enterprises located in Europe, within a European culture, when they are not obliged to comply with the 1998 declaration.

This lack of coherence between respect for fundamental rights, over which there is no longer any dispute at international level, and soft law mechanisms, directly threatens the goal of social cohesion.

It might also be thought that restoring coherence between the different soft law mechanisms should be a task for the ILO. This is particularly so since this call for greater coherence between national, regional and international policies is a key message of the report produced in 2004 by the World Commission on the Social Dimension of Globalisation (ILO, 2004).

It is therefore vital to expand the transnational dimension of legal mechanisms which combine procedures, rules and methods for achieving transition.

In the area of social cohesion, there is therefore a twofold challenge, which consists in linking the goal both to this transnational dimension of employment reports and to respect for fundamental rights.

This same idea recurs when it comes to accommodating the local and regional dimension, and the relationship between these, to the global dimension in order to respond to transition situations.

## *2.2. Linking local responses to the global dimension*

The response to transition and restructuring must be made above all at local level, allowing workers to reposition themselves in the labour market, employers to preserve jobs without risking bankruptcy, and national public policies to be adjusted to questions of unemployment, employability, etc.

Here it is merely suggested that these local policies should systematically incorporate the global dimension of companies’ global market strategies, both procedurally and substantively.

In the area of public policy, it would seem necessary consistently to take into account the analyses made of the value chain, company specialisation and international division.

Lower social security rates for labour-intensive enterprises are also suggested as a general solution to relocation, since it is obvious that where a company’s strategy

centres on reducing costs, wages will never be competitive in France or many other countries in the European Union<sup>25</sup> by comparison with Chinese, Indian or even Moroccan wages. Examination of sectors such as toys or textiles shows this very clearly. The same applies to certain services which can easily be relocated in some enterprises (for example, call centres, and the back offices of transport companies). Such measures only affect a limited range of situations resulting from company decisions to relocate purely manual activities.

It is therefore important in a given country to make a distinction between the jobs which directly compete at the global level with those of other countries and those which do not (particularly because they involve technology, innovative research or high-level skills) in order to draw up different policies.

This link with global strategies must also be made in order to support the growth of innovation and competitive strengths in line with European policy: at the social level, it can be said that the demands of social cohesion should lead to a focus on the comparative regional advantages of innovation and creativity: well-developed, stable social dialogue, expanded regional dialogue with institutional players, an active skills training policy, retraining and a high level of education. Here too, a link must be made with the strategy of the company, which can choose between the comparative advantages offered by the European market. Social policy is then crucial (in conjunction with various economic policies).

Many examples could be given: it is inconceivable, for example, that a significant growth in casual manual work will produce a comparative social advantage if the main requirement is to have a stable, highly skilled workforce. The expansion of this casual labour force is then merely a way of minimising local costs for enterprises which do not have global market strategies, without increasing their competitiveness, except at the margins (Lorenzi and Fontagné, 2004).

The need to take into account the global dimension is therefore the reason why transitions need to be orchestrated at the European level, within a *regulated transnational framework*. All the indicators have suggested that the enlargement of the Union will lead to a growth in economic activities in the new countries of the Union. This mobility of economic activities, moreover, provides an opportunity for development and growth for accession countries. In the long term it is a guarantee of social cohesion across Europe.

The transition mechanisms were not designed to allow the countries of the Union from which activities are being relocated to react to this upheaval. The Commission proposed in its communication on restructuring of 31 March 2005 that an “anti-shock” fund should be created, and this idea was taken up again by Mr Barroso during the Hewlett Packard case.<sup>26</sup>

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25. At least among the 15 “old” countries of the Union.

26. *La Tribune*, 10 October 2005.

The “anti-shock” fund would make it possible to fund schemes for amortising company restructuring at local and regional level.

This transition measure would appear important at an institutional level in order to support restructuring in the European market in order to link the local dimension to the global dimension on the European Union scale.

This link between the local and the global dimension has many other applications, which are all important in order to ensure social cohesion in Europe.

Hence, in relation to worker representation at the national level, it is the reason why informing and consulting workers should not be seen as a national activity where the operation envisaged has a wider impact or is to take place within an international corporation;<sup>27</sup> it is the reason why the procedure for consulting European works councils should be seen as taking precedence over national consultations in order to take account of the transnational impact of restructuring,<sup>28</sup> and assumes that procedures should be available for very rapidly intervening in decision making and should incorporate the transnational dimension, as could have been done when the Vilvoorde works closed. This means that job reallocation (regrading) and mobility can also be planned at the transnational level.<sup>29</sup>

In relation to fundamental rights, it assumes that annual plans for national employment policy respect fundamental rights and that a link will therefore be systematically established for the future between EES (European Employment Strategy), OMC (Open Method of Coordination) and the EU Charter.

It also assumes that the mechanisms set up to monitor fundamental rights are implemented so that they become more effective at local level for those involved. The procedure for the collective adoption of the European Social Charter is a tool perfectly suited both to the transnational level and to the application of fundamental rights (Moreau, 2005c). Procedural reforms since 1996 reveal stronger complaints and greater adoption of the Charter by trade unions (Akandji-Kombé, 2001, and 2005, Brillat, 2005, and Gori, 2005). However, it is vital that violations of rights should receive wide coverage in the media as soon as they are identified, and that the decisions taken should be disseminated. Currently, although change is under

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27. In France, for example, a works council may obtain information about a transnational group where it dismisses workers on economic grounds. The European directive on dismissals on economic grounds does not allow for the transnational extension of this information.

28. This procedural issue is widely discussed in France because of the difficulty of linking national institutions representing workers with European agencies, as at the colloquium of 1 December 2005 on restructuring organised by Droit Social.

29. The French Supreme Court has since 1995 (Videocolor judgment, Moreau and Trudeau, 2000) held that international corporations are obliged to offer regrading. Jobs must therefore be offered in other companies in the group to employees whose skills allow. This international obligation to offer alternative employment does not apply to manual jobs because of differences in pay, nor to highly skilled or managerial staff (Ray, 2005).

way in some countries in particular,<sup>30</sup> the Charter is still little known among trade unions and barely acknowledged when reforms are planned, even though it requires that fundamental rights are respected in the member countries of the Council of Europe that have ratified it and are therefore a bulwark against deregulation and the spread of vulnerability.

Furthermore, reforms have allowed more bodies to make complaints. Those involved in civil society, such as many NGOs and associations protecting human rights, have a well-developed ability at the transnational level to identify violations of fundamental rights. These new players must, however, be recognised if they are to be representative in the different countries. Only eight countries have expanded the list of agencies, which still remains inadequate. Lastly, it would be useful for bodies to work together at the transnational level so that any violations of the Charter can be reported by a transnational coalition of agencies in the very efficient way introduced in North America.<sup>31</sup> Co-ordinated transnational action allows greater synergy in reporting and dissemination. It would therefore be particularly beneficial if the Charter could be given renewed importance since it gives wide opportunities for social agencies to create methods of transition which respect fundamental social rights (Moreau, 2005a).

In conclusion, it would appear that the goal of social cohesion in Europe requires further developments at the legal, procedural and substantive level which will allow for transnational employment reporting and the organisation of transnational rights.

Obviously, there are many obstacles, both conflicts of interests and possible changes among institutional, social and political actors.

Diversification of methods of regulation also requires great vigilance over compliance with fundamental workers' rights.

But by combining responses built on workers' rights, limiting the use of imprecise terminology and expanding new techniques of transnational regulation which provide for more effective respect for fundamental rights throughout Europe, social cohesion may be enhanced in order to meet the challenges of societies in transition.

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30. Such as France, where there is widespread argument over daily rates of pay for executive staff in the context of time management. *Liaisons Sociales Europe*, September 2005.

31. The complaints procedure as part of the social agreement concluded as an adjunct to NAFTA has allowed trade unions in the three countries to complain jointly of violations of listed fundamental rights that are common to the three countries. This has enabled the powerful American unions to back complaints of violations of fundamental rights, and in particular trade union law in Mexico. Independent trade unions have in this way been able to emerge in Mexico. These complaint procedures have had a limited but genuine impact since hearings have been public and have received wide media coverage in the United States. Since no multinational wants publicity about violation of fundamental rights, this media coverage has been the means of effectively fighting for respect for fundamental rights. President Bush has now banned public hearings, since when no complaint has been lodged. The fragility of the institutional system is obvious since it is entrusted to government rather than to the courts.

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### III. New forms of labour flexibility: how should labour law evolve?

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#### 1. Divergent reactions to labour market flexibility

The forms of employment are becoming more and more diversified. Flexibility is one, perhaps the major, dimension of this process of diversification which is challenging the traditional modes of regulation, both legal and collective. In fact, most bodies of law were meant to set standard rules on standard objects. Continental labour law is an extreme case because it concentrated since its origin on providing basic standards and protection to subordinate workers employed by (large) industrial employers. Subordinate employees still make up a major part of the workforce, but other work arrangements in part independent, temporary and in some respect diverse have emerged. The very core of employment is becoming more variable and unstable under the pressure of international competition. Structural economic and social changes have altered other conditions in which traditional labour law has operated: the Fordist industrial companies, the large industrial unions and the national state which have been the three main actors of regulation.

The changed environment is challenging the very essence of the classic model: namely, the idea that national law – and similarly collective bargaining – can regulate with “imperative” effects and through unitary rules all the major contents of labour relations.

The reactions of the national systems to these changes have been far from convergent: reforms are controversial and resisted in critical areas of labour and welfare legislation.

Sheer deregulation is in principle excluded according to the so-called European social model. But this does not exclude that it has been practised with various degrees of intensity in some countries.

An opposite reaction, explicitly or implicitly advocated, by lawyers and politicians is to contrast or resist diversification and flexibility. This policy can hardly be successful. It tends to increase the segmentation of labour markets and the distance between the atypical workers and the core labour force; it is unlikely to save the latter from outside economic pressures. This dualism may favour a sub-optimal allocation of the workforce, reduce the incentives to invest in human capital and consequently the capacity of the labour market to express its full potential of growth which is Europe's top economic priority.

These negative consequences are already visible in some countries, particularly those, like Italy, most dedicated to protective labour legislation: the quantity and pervasiveness of this legislation are being reduced; the standard employment contract is being eroded at the margin by the multiplication of new forms of flexible contacts (an example is the Italian Act 30/2003) and the overall performance of the labour market remains poor.

This trend might lead to the gradual dismantling of labour law and may shift the regulation of most aspects of employment relations within the scope of civil and commercial law.

Other policy options are needed in order to avoid the two extremes, namely the pitfalls of deregulation and the sheer preservation of the existing labour law. Many European and international documents indicate that good employment practices must combine economic and labour flexibility necessary to foster European competitiveness with social regulations capable of meeting the needs of the diversified labour force.

## **2. The need to reframe protective regulation**

In order to meet this difficult task, labour law must not only redefine its focus and techniques but also enlarge its scope and be more directly involved with welfare regulations and policies. The diversification of employment and the new forms of flexibility have major implications for the content of protective legislation and of minimum standards.

The need for protection must be tailored to the different position of the various types of workers: not only to legally dependent workers, but to the other types of workers who cannot be considered as legally subordinate but who are in a situation of economic dependence vis-à-vis one or several principals. These workers have come to create a grey area between dependent employment and self-employment which is growing and which is in itself variable.

Not all the standards, which compose the traditional core of imperative labour law, must be necessarily extended to this grey area. Some protection is inappropriate, or may apply partially or with adaptations. The process of extension and other adaptation of some protection may concern not only economically dependent workers but also self-employed people: for example, protection against abrupt termination of a continuous employment relationship, or protection against work accidents when the independent activity is done in an environment which is "controlled" by the client. On the other hand, some norms derived from traditional labour law may lose importance or imperative force for workers who have acquired significant operational independence even though they are hired with a subordinate employment contract.

This diversification of labour standards has to be tested “on the ground”, with a view to making them realistically suited to the actual characters of work and dependence, and therefore more easily justified against allegations of arbitrary rigidity. Definitions of employment are still important and cannot be left to individual choices but the variety of work arrangements deprives the notion of subordination of its absolute value.

### **3. Regulating external and internal flexibility**

Flexibility has increased for all forms of employment, including traditional subordinate employees and has itself taken different aspects.

External flexibility is the most controversial because it directly affects the stability of employees and may lead to unsustainable precariousness, both socially and personally. This is why it has been extensively regulated by law and collective agreement. For example, fixed-term contracts are often required to be justified reasons connected to the nature of work or to specific business needs (more or less specifically defined); in some countries they may also not exceed a maximum number usually fixed by collective agreement; a similar result may be favoured by a combined use of incentives and disincentives. The rationale of these limitations is that an excessive use of these contracts may be prejudicial to the stability of the workforce and possibly reduce the enterprise commitment to invest in human capital.

A further policy objective is to prevent a reiteration of fixed-term contracts for the same employees. This result can be obtained partly through direct prohibition, but it requires a wider set of interventions, particularly in order to avoid that the reiteration of short-term contracts be concentrated on specific groups of employees (young people, women and the elderly). Social research indicates that the risk of falling into this trap depends on the combined influence of personal and social conditions (family background, education, and the economic and social context) and can be reduced only by intervening on the same conditions.

Traditional legislation has devoted scarce attention to internal or functional flexibility, which is related to the organisation of work, working time arrangements, and the use of human resources and training. European reports insist that these areas are decisive in promoting a positive use of flexibility and what has been called the high way to productivity, based on innovation, the quality of human resources and not simply on cost reductions.

Progress in this direction depends not so much on legal regulations but on enterprise practices; and according to the prevailing European model these practices should be validated by collective consensus via collective agreement and/or participation.

Legal and collective rules may facilitate the task, for example by removing existing obstacles to internal flexibility: such as traditional job classifications and rigid regulation of working time schedules. Part-time work is a special case in point. Its use has been restricted in many countries by law and collective agreements, indeed following cultural and social stereotypes shared by both parties, and by public opinion. On the other hand, a positive use of the flexibility inherent in part-time work may require a regulation directed to conciliate the different interests of the employers and of the employees about the distribution of working time. The problem is common to all employment contracts but is more acute for the part timers, because they have usually personal reasons to accept a limited work commitment and a reduced wage (if part-time work is voluntary). How to conciliate these reasons with business need in order to decide work time distribution is a key policy issue. Equally important is to determine whether this conciliation may be left to the individual parties to the contract or should be regulated to some extent by collective parties.

#### **4. Law of dismissal and employability**

The regulation of dismissals is one of the most controversial areas of labour law. Attempts to reshape (reduce) the protection against unjust dismissal have been strongly opposed as being an irremediable threat to employment stability; indeed some of these attempts have been interpreted (and framed) as a way to reduce the unions capacity to defend employees. On the other hand, the traditional protection against dismissals has been criticised, also by international organisations, as a major factor of rigidity of the European labour market. Whatever the judgment on the point, this protection has been progressively eroded in many directions: by the diffusion of fixed-term contracts, often motivated by the desire to escape legal restrictions, and by the miniaturisation of production, because small firms are totally or partially exempted from protective legislation.

The issue is particularly controversial in countries, like Italy, where the protection of employment stability rests largely on the law of dismissals, due to the limited scope of welfare provisions in case of unemployment and to the weakness of services on the labour market. The result is a vicious circle whereby the resistance to changing existing job protection is motivated by the lack of efficient services and of welfare provisions and, on the other hand, the delay in reforming these provisions perpetuates the status quo and increases the opposition to employment mobility in general.

#### **5. From job protection to labour market welfare**

This remark leads to a broader issue. The increased diversity of the modes of production and consequently of employment makes it more and more difficult for labour law to protect the worker in a given job and place of work: which has been so far the main preoccupation of the national legislators.

In order to be socially and economically useful, labour law must shift its focus from the individual place of work to the labour market where mobile workers operate more and more often.

This implies changing not only the sphere but the target of interventions: from rigid protection of a given position in employment to promoting employability and a better functioning of the labour market. Good employment does not depend solely on labour regulations since it requires a combination of conditions favouring economic growth. But labour law can contribute to this end precisely by promoting a better functioning labour market, which is an essential component of a competitive economy.

Policies and instruments conducive to this result are different from the traditional regulation of individual employment relationships. The focus is more on services and on active policies than on minimum standards, and more on promotion and institution building than on limitations.

Innovation must be directed in two major directions: providing services to employees and enterprises on the labour market, and guaranteeing welfare support in case of partial or total unemployment.

These two areas have been scarcely considered in the traditional labour law of many countries and disregarded by labour lawyers, but have been timely developed in other national systems, particularly in the Nordic countries. Now, they are both essential in maximising employment opportunities and making good use of flexibility itself. The characteristics of the service and knowledge society require innovative approaches to these policies even by the countries that have developed them in the industrial markets of last century.

This is true for education, which is now the core of active labour policies. Contents, timing, quality and investment in education must be adapted to the needs of the knowledge society and of its inhabitants, who are far more demanding than their industrial predecessors. Diversity of employment and personal conditions require an individualisation of educational services; technological and organisational changes coupled with a prolonged life cycle demand an extension of education into lifelong learning. Consequently, the task for public policy goes beyond providing basic education as an equal starting point in social and economic life. It becomes a continuous commitment to provide concrete opportunities for personal capacities that correspond to the trends of the labour market, and to guide individuals with appropriate employment services to make the best use of work opportunities.

The same individualisation and adaptation during the life cycle are also necessary for the other active labour policies; they must evolve to provide a more sophisticated set of services than the traditional placement and intermediation between the standard demand and offer of jobs.

Education and services on the labour market deserve public support and investments because they are public goods necessary both for competitiveness and for social well-being. This does not imply that the organisation and provision of these services must be reserved for public administrations. Private participation in these activities has been widely experienced: which is again a significant evolution from the traditional approach of many countries. Conditions and forms of public-private participation in these services, like in others, should be tested, free from any ideological bias, on its capacity to improve the quality of the services. One condition required in many countries and in my view consistent with the nature of the services is that public institutions maintain the role of setting the policy directives and of controlling the qualification of the private actors operating in the field.

A further condition must be stressed. In order to be effective, policies on the labour market should be matched by consistent human resource practices in the enterprises. Consistent means that they must correspond to the expectations of the educated workforce to be employed accordingly: that is, in a labour market and in a context of production and work organisation that are also knowledge-based and consequently inclined to use the potential of the educated workforce.

For this reason the implementation of such a policy requires a tripartite effort. Governments – national and now more and more local – can contribute by setting the institutional framework necessary for the formation of such a knowledge-based environment, by supporting investments conducive to it and providing incentives for good practices (especially, enterprise plans directed to increase the basic skills of the workforce and not simply to provide firm-specific training). But a collaborative approach of the social parties – both unions and the business community – is decisive for the success of these policies.

## **6. The reform of welfare policies: flexicurity**

The redefinition of traditional approaches is particularly demanding in the area of welfare and social protection, which are essential components of the European social model, distinguishing it from other systems (such as that of the United States). But the historic patterns of European welfare must be profoundly revised if they want to survive their success in the 20th century. The traditional southern welfare system based on strict protection of the job, weak protection on the market and job-based social insurance is no longer viable. It implies social exclusion of women, reduced protection at high costs and low employment, particularly in the service sector.

Some aspects of universal welfare, coming from the social democratic tradition, also need to change. This welfare has been shaped after the pattern of the Fordist type of stable employment and geared to function in a context of relatively predictable economies and production systems. It must be adapted so as

to face the more demanding challenge of highly competitive and rapidly changing markets; and to meet the needs of a highly differentiated workforce.

A major direction of change is based on activation strategies – that is, on promoting forms of active welfare, or welfare to work. A more active welfare is necessary both to reduce the costs of an increasing take up of benefits and to mobilise the personal capacities of the users – in order to become an instrument of personal promotion more than simply of economic assistance in case of need.

The new welfare must be not only more active but more extensive in coverage in order to satisfy the demands of an audience much wider than the core labour force usually protected in the past. In particular, it must be extended to atypical and intermittent workers who have been by and large excluded from protection. It has to respond to a wider range of needs: that is, to protect employees from the new risks and insecurities brought about by economic and social innovation, the risks of the digital divide, the danger of new forms of discrimination linked to immigration, the difficulty of keeping a sufficient level of employment stability through variable and intermittent work experiences and the need to switch between different situations – that is, from active life to family and personal breaks, from full-time activity to flexible retirement and active ageing.

These challenges require a wider strategy of social protection. Social protection must be directed not only to fight the traditional forms of poverty and of social exclusion, but to enhance social inclusion, to facilitate the various “transitions” which characterise the present societal transformation, to reduce the uncertainty which affects all employees (even those traditionally self-protected by a strong professional position) and finally to promote better and equal opportunities in employment, in personal development and in family life. Working families more than individual workers have to be also considered by social welfare.

Here again more security is needed to make flexibility acceptable in the era of uncertainty. “No flexibility without shock absorbers” has been proposed in parallel to the old saying, “No taxation without representation”. Security itself becomes a wider and more complex goal related not only to income, but to personal and family welfare.

This combination of flexibility and security is an objective which can be applied in different aspects of labour and welfare policy. The best policies of some northern European countries indicate that this combination can work. Flexibility is in fact adopted and accepted more easily when the employees are protected by a safety net on the labour market. The good overall performance of these countries proves that a high level of social protection need not reduce, and indeed may spur, economic efficiency and development, on condition that protection be implemented together with activation policies, innovative employment and productive practices.

## 7. Promotion of collective labour relations

This virtuous combination can also be found in several new practices implemented by the social partners, bilaterally or with the assistance of public institutions: innovation agreements which facilitate productive innovations and quality of company performance, whilst improving working conditions at the same time; employability agreements – which aim at developing competences of the staff in order to keep them employable in a situation of organisational change; and flexicurity agreements – which enhance flexibility of work organisation and employment while improving security of work.

National legislators in Europe have always favoured the development of industrial relations, mostly by supporting labour unions' rights and collective action.

The reasons that have justified public support for collective industrial relations are no less compelling in the present society. An unrestricted individualisation of employment relations would undermine the balance between flexibility and security which is held necessary by the European model. But here, too, the methods of collective labour legislation must evolve.

Legislation concerning trade unions' rights and collective action is still important in Europe. Basic collective rights should be extended also to the new forms of employment that are economically dependent. The European directives have given a significant emphasis to reinforcing the very "roots" of collective organisation at the plant and enterprise level. The legislation of European works councils is a case in point. But this kind of legislation – even extended – is hardly sufficient for redressing the balance of power in industrial relations.

In order to create a favourable environment general policies are required – namely, those policies indicated above that are designed to modernise the labour market, to create a network of universal welfare-granting basic security for all kinds of workers and to support social concertation for local development – because the focus of industrial relations and growth is being decentralised. More specifically, national legislators can support the participation of trade unions not only within the enterprise (which concerns mainly the large companies) but also within public institutions which provide labour market and welfare services to the workers.

The experience of some countries where this participation is widely diffused (so-called Gent system) and accepted by the social parties has shown positive effects on the unions' organisation and action. The unions' presence in the network of bilateral or trilateral institutions that administer diffused community welfare may support their traditional action in the workplace and be a means of acquiring the membership and allegiance of the new and diversified labour force. This approach requires a significant change in the unions' perspective and culture: they are called on to become not only negotiators but service organisations,

intermediaries between public institutions and the workers-citizens; indeed, facilitators of their access to the complex services and opportunities of the present society.

## **8. A new approach**

The analysis presented here implies possibly (not necessarily) a reduced scope for labour legislation. Certainly, it demands a new approach. Labour law should be more selective in its priorities, less protective and more proactive, less “exclusive” and more intertwined with social policies and connected with labour market and social institutions.

More selective, because both legal protection and promotion must be better finalised according to the variable positions of the individual workers not only in the workplace but in the labour market.

More proactive, because labour law, and labour policies in general, demands and needs (material and immaterial) more complex and individualised provisions than those of last century industrialism. The focus of policy choices is consequently less on the safeguard of the status quo, and more on the promotion of equal opportunities: for access to education, quality employment, personal development, etc.

## **9. The international and European dimensions of labour law**

Further analysis should be devoted to the international dimension of labour policies and legislation. Traditional “nationalism” is under pressure from supra-national forces; but in spite of the growing awareness of this, most areas of labour law and welfare remain national and, in the case of Europe, outside the reach of European policies. The European union has been formed with the aim – among others – of compensating for decreasing national authority and resources, including in the area of social welfare.

In perspective, social policies should be projected on a global scale: at least for those who envisage not only global competition but “democratic development”. However, globalisation of social policies can hardly be pursued immediately and directly. The European social space is a more manageable dimension. Its construction may be a necessary intermediate step on the road towards global policy making.

A major weak point in European policy making, and indeed in European politics, is the limited influence that it has been able so far to exert on national policies in critical areas of labour and welfare legislation.

I see the limits in the implementation of the Lisbon agenda and the difficulty of co-ordination between EU and national reforms. But I doubt that the targets set

at Lisbon can be met by abandoning or reducing the co-ordination efforts and by reserving to the European level the reforms of capital and product markets while confining labour market policies to the national states. Improving co-ordination between these two level is a central test for the effectiveness of European institutions. This may require reinforcing and innovating the multifaceted procedures of soft law, according to some proposals already discussed. But procedural arrangements can hardly fill the gaps of political weakness. This weakness could be overcome only on the same ground, that is by strengthening the political identity of Europe and by providing it with a more solid constitutional basis.

The process of European enlargement makes more acute the need to build common social policies.

In fact it emphasises another issue: namely the diversity of practices and regulations that exist in Europe. Some degree of diversity or dualism is present in a complex economy, also taking into account that weak territories and groups may not be able to compete on the same ground as the rest. But this is bound to create tensions, as those recently emerged in the debate about the Bolkestein directive on the liberalisation of services.

A major question is whether an “inferior” quality of the flexicurity mix and of regulation for some areas should be the price paid to allow for a better trade-off in the stronger sectors, or whether this dualism can be controlled and possibly corrected. In both cases it is questionable whether and to what extent the inferior conditions of work in one country can be isolated within the national borders and not come into competition with the conditions prevailing in nearby countries.

The first option would endorse an inevitable “regime competition” among different areas and groups based on working conditions and welfare: which would severely weaken the idea of a social Europe.

The second alternative would allow a higher degree of flexibility in employment and wages, as temporary derogation to the pattern, not as a stable dualism. The dualism should be controlled through tripartite consensus, as some experiments indicate (for example, in southern Italy) and should be compensated with a sufficient degree of social protection on the labour market.

Moreover, the different mix of flexicurity should be combined with structural interventions by the national states and by the EU (via structural funds) directed to improve the competitive conditions of the weak areas and groups, so as to enable them to enhance their competitiveness and their capacity to grow according to the common guidelines.

These are very tentative ideas; but they should be tested by those, scholars and practitioners, who believe in the role of labour law and social policy even in the present radically changed global environment.

Markets are wider but should not be more powerful than public policies.

## **PART II – THE SPACE FOR RECONCILIATION**

### **A – Mobility, social protection and the quality of transitions**

#### **I – How to reconcile labour flexibility with social cohesion: some ideas to consider**

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##### **Introduction**

What challenges do labour flexibility, job insecurity and new career risks present where social security and social cohesion are concerned? In particular, what challenges arise out of the new risks to which younger cohorts and less skilled workers are increasingly exposed, such as shorter and more discontinuous careers, unemployment and involuntary transitions?

As far as social security is concerned, the challenge to be met can be described as that of striking a new balance between “commodification” and “decommodification”, to use the terminology of Esping-Andersen (1990).

Commodification in this sense means that help has to be offered with integration/reintegration into the labour market. This can include assistance at the beginning of one’s working life, after periods out of the labour market or after periods of reduced or insecure labour market participation, but also support for mobility (for example, geographical mobility, job mobility). The topic of commodification has been brought to the fore by the shift towards an “active welfare state”. But, in spite of the general trend towards activation, countries differ widely in the degree and targeting of the help offered, as well as in the level of coercion they employ (Lødemel and Trickey, 2001).

Decommodification means independence from the labour market through the right to leave it in certain situations and life phases, and in particular through financial support for these phases. This has not been rendered superfluous by the shift towards an active welfare state. On the contrary, there is a need to rethink and redefine the circumstances and phases in which people are not expected to earn their living through work, and how these periods (before, during and after the “potentially active” phase) can be covered.

The empowering of people with regard to flexibility includes protection against unacceptable flexibility and insecurity, as well as support for the desired flexibility. This does not relate just to a certain work situation or a certain moment in the individual's life, but should be designed as a concept for different stages in life, viewing life as a sequence of phases. Among the questions to be tackled from this perspective are the following:

- How can continuity in working life be supported and involuntary interruptions be avoided?
- How can the desired flexibility and discontinuity in terms of time use be made possible?
- How can transitions be supported?
- How can a "decompression" of working time be achieved?
- How can cash benefits and other forms of financial support be reallocated?

The considerations in this paper will relate to these areas. There will also be a discussion of whether and how the measures concerned can contribute to social cohesion, as defined in the Council of Europe's "tree model".<sup>1</sup> In particular, the question has to be asked of how equity, dignity, autonomy and participation – the four dimensions of well-being described in the Council of Europe's tree model – can be given support.

### **1. Support for continuity and upward mobility**

Whether "atypical" employment relationships or interruptions to employment prove to be precarious for the people concerned depends, among other things, on their cumulative duration and on the way in which they develop over the individual's working life. A short period of employment with a minimum part-time contract, or a brief episode of unemployment (for example, after moving to another region) might have little effect on people's employment and social security record, or on their confidence and self-esteem. Long or repeated periods of unemployment or marginal jobs, on the contrary, usually have a major impact on income, social security entitlement and on individuals' self-esteem and belief in their future prospects on the labour market. One key task of labour law and social security systems is therefore to provide support for continuous employment and upward mobility, especially where the long-term prospects of people with unstable jobs are concerned. Action in this field requires more knowledge about the long-term risks of atypical jobs (for example, fixed-term contracts, agency work and employee hire, "mini-jobs") and career interruptions. Specific health risks, unemployment risks or income risks that might occur in the longer

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1. See "Concerted development of social cohesion indicators – Methodological guide", Venice Seminar on the Development of Indicators for Social Cohesion, 12 and 13 February 2004; and Wiltshagen (2005, p. 3).

term need to be identified. Fixed-term contracts, for example, not only entail a higher risk of future unemployment than regular jobs, but might also lead to increased stress due to the feeling of insecurity (Pearce, 1998, and De Witte et al., 2002). It is not only actual events or discontinuities that play a role in people's working lives, but also their fears and expectations. According to OECD data, the subjective feeling of job insecurity increased in seven European countries between the mid-1980s and the mid-1990s; this trend was most significant in the United Kingdom, Germany and the Netherlands (OECD, 1997, pp. 129-160, and Walker et al., 2000, pp. 20-31). High subjective job insecurity can not only influence people's performance at work negatively, but also lead them to refrain from decisions on matters such as marriage or starting a family (for a differentiated analysis of the effects of job insecurity on people's well-being, see Burchell, 2005). This possible impact of growing – perceived and/or real – job insecurity and demographic developments in western countries – low birth rates, for example because young people refrain from or postpone parenthood – has not yet been taken up sufficiently in demographic debate.

A sustainable concept of flexible work therefore requires some effort to prevent occupational diseases and stress by limiting job insecurity. High benefits in cash and in kind in the event of job loss might help employees to accept the risk of becoming unemployed, as the Danish example shows.<sup>2</sup> Employment contracts with temporary work agencies that guarantee a certain continuity of work and remuneration without guaranteeing employment in a specific company are another way of combining flexibility with security over a period of time. This can be combined with training periods subsidised by the unemployment insurance scheme/labour office during periods when employees' services are not needed; in Germany the recently introduced PSAs (personal service agencies) follow this route.

Are flexible jobs, for example temporary contracts, stepping stones to a permanent job, or are they dead-end streets? The results of existing studies about this topic are mixed (see European Commission, 2004, chapter 4). Some studies actually come to the conclusion that temporary employment seems not to be a "trap", but a springboard to permanent employment, whereas others suggest that its impact depends very much on both the duration of the fixed-term contract and the number of temporary jobs and spells of unemployment.<sup>3</sup> The studies also reveal considerable divergences according to institutional settings and the gender and educational attainment of the workers under consideration (ibid., p. 186).

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2. Interestingly, the subjective feeling of job insecurity is higher in Germany (in spite of the country's quite rigid employment protection legislation) than in Denmark, where hardly any employment protection legislation exists (OECD, 1997, and Walker et al., 2000).

3. According to a paper by Gagliarducci (2004), the probability of moving from a temporary job to a permanent one increased with the duration of the temporary contract, whereas repeated temporary jobs, and spells of unemployment in particular, reduced the probability of a transition to a permanent job (European Commission, 2004, p. 186).

When flexible jobs are regulated through labour law, emphasis should therefore be placed on the pathways from more flexible to more secure jobs, so as to make sure that flexible work is not a dead-end option. Under the Dutch approach to flexicurity, this is one of the key areas of regulation, one example of this being what is known as the “Flex-Wet”, introduced in 1999, a law which gave workers with flexible jobs (such as on-call work or temporary work) greater legal security and defined their path towards more stable employment. This development has been enforced by a collective agreement for 1999-2003 in the temporary agency work sector, under which agency workers gradually acquire more rights as their employment relationship continues (Wilthagen, 2001, p. 18).

At company level, the most effective way of supporting continuity in times of economic crisis and decreasing demand for labour is to replace external forms of flexibilisation (in other words, the laying-off of employees) with internal forms – such as the adjustment of working times and the further training of employees to equip them to meet new content-based requirements. In Germany, new regulations on working time accounts and “opening clauses” in collective agreements have greatly extended the freedom of action of companies in this field, and these options are increasingly being used. Employees contribute to this strategy of flexibilisation by accepting (temporary) cuts in income in exchange for employment stability. The replacement of external by internal flexibilisation can be criticised as leading to privatisation of the costs of labour market adjustment: it is not the (collectively financed) unemployment insurance scheme that pays, but employees and employers who bear the costs individually (for example, by agreeing to a reduced wage or working time for a certain period, or accepting some reduction in flexibility in return for employers’ promise that there will be no dismissals for a specified period). But account has to be taken of the fact that employees can secure their human capital, which is an advantage for the employer, too, and the strategy of internal flexibilisation can therefore lead to a win-win scenario. The advantage for unemployment insurance is obvious: internal flexibilisation keeps down expenses, as compared to lay-offs. One incentive for the promotion of this strategy would be to reward companies for opting for internal adjustments rather than dismissals. This could be done, for example, through tax relief or by making transfers from unemployment insurance funds. Larger companies usually have a range of possible ways of making use of functional flexibility to retrain and reorganise their staff for new or different tasks. Smaller firms, on the contrary, often have only restricted options for adjusting to changing circumstances and changing labour demand through their internal labour markets.<sup>4</sup> In this context, it has to be ascertained whether and how the options and the costs of dismissals should be differentiated according to company size. In any case it is important that employers make clear what is

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4. In Germany recent labour law reforms have stressed this differentiation, for example, in the field of protection against dismissals.

going to happen and what the criteria for eventual dismissals are. As studies have shown, it is the uncertainty, ambiguity and lack of information about what is going on that is decisive for employees' feelings of insecurity, and hence for their psychological well-being (Burchell, 2005, p. 9). Open communication can reduce these stress factors, thereby contributing to personal well-being.

In terms of social security one of the main problems of flexible jobs and discontinuous careers is that these may be accompanied by equally discontinuous social insurance coverage (Klammer, 2000). The challenge therefore is to give people in non-standard jobs access to social security systems.

The focus of social security on providing security for different statuses and life phases – a precondition for social cohesion – should encompass an “empowerment” element geared towards helping employed people to maintain (or regain) their employability. This goes with the idea of “participation” in the Council of Europe's tree model. The development of lifelong learning concepts plays a key role in this area. This approach is currently considered to be of central importance within the framework of the European Employment Strategy (see the European Commission's Memorandum on Lifelong Learning, issued as long ago as 2000). Lifelong learning is directly linked to workers' employability and career prospects. Training and lifelong learning appear to be crucial, given the specific problems on the flexible labour market faced by people with low skills levels. At present, the less skilled and older members of the workforce – both problem groups on the labour market – are strongly under-represented in training measures. Across the EU, only 2.7% of less skilled prime-age workers participated in training in 2001, whereas the figure was 15.5% among highly skilled workers in the same age group. Among older workers, the figures were 1.8% of the less skilled and 9.7% of the highly skilled (European Commission, 2003, p. 173). Differences between countries are considerable, however. In Denmark, for example, participation by older workers in training measures is nine times as high as in Germany (Braun, 2002, p. 671). Employers will only offer training to less skilled or older employees if they can expect a positive return on their investment. The predictable tendency to delay the age at which older workers can withdraw from the labour force could increase the incentives for employers to invest in lifelong learning, since it will extend the pay-off period (European Commission, 2003, p. 174).

The employee, the employer and the state can all benefit from lifelong learning, since it is a prerequisite for continuous employment. The employer benefits because training employees according to companies' demands can cut the costs which arise if employees fall ill as a result of their inadequacies or stress, as well as the costs of early retirement, dismissal or the taking on of new staff. Employees benefit because training increases their adaptability (functional flexibility), both within their company and in the context of other companies which need labour. The state and social insurance system benefit if unemployment can be

avoided. All the above-mentioned players should therefore be involved in the financing of training activities. Companies can offer “learning time accounts” as a flexible instrument for employees to build up training time throughout their careers (Keller and Seifert, 2002). However, empirical evidence shows that employers tend to focus training on their core staff, and collective agreements also show a bias towards insiders (Wilthagen, 2001, p. 17). Although the European Commission, in its concept of lifelong learning, stresses the role of the social partners in regulating training provision, the flexible workforce and groups affected by high labour market risks will also need additional training. The state could fund entitlements for target groups subject to special labour market risks, for example, training vouchers financed through taxation (Wilthagen, 2001, p. 17). Another way of involving employees and the social security system would be to change unemployment insurance into “employment insurance” (Rabe and Schmid, 1999 and 2000) or “employability insurance”, the idea being to pay one portion of social security contributions into a personal training account that can be used to finance skills training. In the Netherlands, the government has promoted the idea of using existing workers’ savings schemes to finance further education and training, or personal development accounts for those who do not have adequate financial resources of their own (Stuurgroep Verkenning Levensloop, 2002, and European Foundation, 2003, p. 131).

## **2. Support for discontinuity**

A second important task for labour law and social security is to support flexibility and discontinuity over a lifetime where necessary. This seems to conflict with the first task described above, “support for continuity”. But in fact it is an important prerequisite for reducing insecurity and empowering people in respect of flexibility. Employees in fact have different time needs in different phases of their lives. This has become more obvious in recent years, as women have increasingly entered the labour market, but the question of social care (for children or frail elderly persons) has in part been left to be solved privately. If no better ways of achieving a work-life balance and reconciling work and care are developed, this will pose a major threat to social cohesion.

The widespread tendency, when welfare state reforms are carried out, to expect all able-bodied adults to earn their own living has been discussed as the “adult worker model” (for example, Leitner, Ostner and Schratzenstaller, 2004). An acceptable “adult worker model” would have to allow variations and fluctuations in working times for people in different life situations and with different priorities (Klammer and Klenner, 2004). The job of the state is to generate the legal framework for different time options and to decide which of these options are to be financially supported through social welfare policy. There is a need for legal rights to adjust one’s working time (working time reduction/working time extension), and to opt to leave and re-enter the labour market (for example, for parental leave). All European countries have some legal options for adjusting

working time or temporarily leaving the labour market (at least for maternity leave). Some of the German reforms of recent years – such as the Law on Part-Time Employment and Fixed-Term Contracts and the Law on the Child-Raising Allowance and Parental Leave (both adopted in 2001) – have been steps in this direction, for example. However, a systematic approach to working-time adjustments throughout workers' careers is still missing.

In an employment-oriented society, there is a need for job release entitlements not only for people who have to care for children, but also for people who temporarily have to look after adult relatives in need of care. Rights of this kind already exist in some countries, for example, in Belgium, Sweden and the Netherlands (Plantenga and Koopmans, 2002, p. 164), but, in spite of demographic changes, they have not (yet) become common in Europe.

At the same time there is clearly a limit to the legislator's influence when it comes to the family-friendliness of the working world. The German provisions on parental leave (which are "generous" in an international comparison based on time) can be taken as an example. The right of mothers (parents) to take advantage of parental leave and to employment security during this phase is regularly undermined in practice in cases where those concerned are in fixed-term employment – something that is increasingly common among younger employees in particular. Other time-based options (such as access to sabbaticals) are also often confined in practice to the core workers who are on unlimited employment contracts.

Account therefore has to be taken of the fact that companies are becoming increasingly important as complementary actors on the "work and care" stage. Because of the direct interrelationship between company working hours and families' day-to-day arrangements, the regulation of working time is the main area in which company-level measures can help to improve the reconciliation of work with family life. Companies implement the framework defined by the state and by collective agreements, and they draw up provisions to operate within this framework. A recent (2003) survey of works councils in Germany conducted by the WSI<sup>5</sup> shows that, in the overwhelming majority of companies, employees have options to adapt working hours to suit the requirements of family life (within the limits set by the company).<sup>6</sup> Currently, in about 90% of German companies, there is some kind of option for the flexibilisation of working time to suit family demands. The option of taking time off in lieu to compensate for overtime previously worked exists in three out of four companies and is the most frequently cited means of adapting working time to the needs of the family. Other options that play a role are flexitime, whereby the employee benefits from some

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5. Institute for Economic and Social Research, Düsseldorf (Germany).

6. A company survey conducted by the Hertie Foundation (Hertie-Stiftung, 2003) arrives at the same conclusion.

degree of flexibility about when to start and end the working day, part-time work, or informal arrangements with superiors or other team members.

An important field for flexibility is the area of working time accounts (WTAs). Many German companies have introduced WTAs since the mid-1990s, mainly for economic reasons. Working time accounts currently exist in about 30% of companies, employing about 40% of the workforce (Bauer et al., 2003, p. 183). WTAs that create options for placing and distributing working time can be used in various ways to meet employees' time needs. But employees can only use flexible working times to suit their requirements if they enjoy wide-ranging access rights to the working time credits they have saved up. The existence of a flexible working time model per se tells us nothing about whether it helps to cater for employees' interests and needs. The specific provisions relating to such working time accounts and the "control of one's own time" are the decisive factors.

From the point of view of employees with care responsibilities, working time arrangements in companies must meet several requirements:

- working times should be predictable and reliable;
- there should be flexibility to address family-related needs (for example, via autonomous withdrawals from working time accounts);
- there should be options in the area of working time duration (for example, switching between full-time and part-time and vice versa, as well as different working hours for part-time employees);
- there should be the option to obtain time-out phases for the busy periods in an individual's life;
- overtime that does not create some kind of "time credit" should be avoided;
- weekend or evening work should be minimised, as these are the most important times for parents to share with their children (Klenner, Pfahl and Reuyß, 2003).

The most important regulatory instrument for working times in Germany is the sectoral collective agreement, although company-level arrangements are playing an ever-increasing role. Company-level agreements need to be negotiated to ensure that decentralisation does not automatically translate into deregulation. Only in a very few cases are existing collectively agreed provisions explicitly geared towards the reconciliation of work and family life. This is an area in which the collective bargaining parties and the players at company level still have ground to make up.

It appears, however, that the "working culture" within the company is more important than specific company-level provisions, as Hochschild (2002) has convincingly shown in a US study. Ultimately, the necessary social policy debate on role models should lead to a paradigm shift in companies, creating a situation in

which each employee is automatically also seen as a person with time needs beyond paid work, for example as a care-giver or as somebody involved in other socially relevant activities (Klammer and Klenner, 2004). This means that companies should no longer base their planning on the assumed norm of the (male) employee – particularly the skilled (male) employee – who is free from any kind of household duties.

The more smoothly the concepts for working time adjustments operate, the less potential there is for disruption to company routines, and the lower the risks of additional costs being incurred (for example, due to parents' absence from the workplace). The state can require or encourage companies to adopt a more family-friendly policy by introducing statutory provisions and creating incentives of various kinds – such as tax benefits for companies which provide certain family-friendly services – by making the awarding of public contracts dependent on family-friendly corporate policies, or through certification schemes and public awards. The parties involved in collective bargaining – employers' federations and trade unions – and the negotiating parties at company level – employers and works councils – can agree on options pointing in this direction. Since 2001, when the amended Works Constitution Act came into force, German works councils have been responsible for promoting the reconciliation of work with family life. Following this regulation, this topic has been the subject of discussion in a large number of companies over the past four years, and this may help to pave the way for better integration of employment and care and to reduce workers' insecurity concerning their future work-life balance.

Economic arguments may create a greater incentive for ensuring that companies' staff policy is more family-friendly. A cost-benefit analysis of the economic effects of family-friendly measures in ten German companies showed an average return on investment of 25%. The same study showed that family-friendly policies avoid over 50% of the costs incurred as a result of a failure to reconcile work and family needs (Prognos, 2003). Savings for companies occurred in particular in the fields of temporary replacements and employee turnover and reintegration costs.

Still unresolved is the question of how companies can be motivated to implement family-friendly working-time policies not only when qualified employees are scarce or for core employees who they want to keep, but also for employees with lower skill levels who are easier to replace.

### **3. Support for transitions**

In cases of both involuntary discontinuity (for example, because of unemployment) and voluntary discontinuity (for example, because of a sabbatical or parental leave), transitions from one status to another occur. An important aim for a policy oriented towards empowerment and the reduction of insecurity is to

support these transitions and to limit the negative effects of transitions in the social security field. An urgent task, for example, is to improve the portability of occupational pension schemes for persons changing jobs. Long minimum qualification periods for occupational pensions often place at a disadvantage employees who change jobs. When pension funds cannot be transferred, labour market flexibility and employee mobility are restricted. An example of good practice in this field is the German pension reform of 2001, making occupational pension schemes much more portable.

In particular, support may be necessary for re-entry into the labour market. Assistance with transition necessitates extended access to active labour market policies for certain groups, but also to relevant cash benefits. The combining of empowerment strategies and financial security provisions also paves the way for individuals voluntarily to take on – and keep under control – the accompanying risks. One example is the decision to become self-employed. Counselling and financial transfers for a limited period, as well as social security rights, can help people to start their own businesses, and can pay for themselves in the long run. Transitions and patchwork career records necessitate an extension of the coverage offered by social insurance systems, since new groups of workers with atypical jobs or career breaks in particular suffer from exclusion from these systems and insufficient social security rights.

The transition (back) to work has for years now been at the heart of western welfare state reforms and the reorientation towards the “active welfare state”. Most countries have introduced or extended programmes directed towards activation of the unemployed. Many evaluation studies (for example, on the British New Deal programmes) unfortunately provide little information about the long-term consequences of activation. As a whole, however, overall economic development seems to remain one of the decisive factors in the “success” of labour market integration through activation (Cebulla, 2002).

In spite of the common terminology of activation there are still huge differences in methods, targeting and degree of activation. Also differing considerably is the degree of coercion employed. In their European comparison, Van Berkel and Hornemann Møller (2002, p. 54) identify at least four different philosophies underlying activation in Europe, ranging from strictly paternalistic approaches to approaches that emphasise the autonomy of the individual. Consequently, the impact of “activation” on social cohesion can differ considerably. A strategy of activation that is focused on empowerment can contribute to social cohesion, because it fits in with the four dimensions of well-being described in the Council of Europe’s tree model: the general goal is to improve people’s chances of participation (in the labour market), giving them autonomy (to earn their own living and to be independent of welfare assistance). This may be regarded as a precondition for dignity. Last but not least, the idea is to increase equity by avoiding the disparity between labour market insiders and outsiders. A paternalistic and

coercive approach to activation would still claim to improve participation, but might well overlook the dignity and autonomy of the individual, leaving open the question of whether such an approach to activation can still be beneficial to social cohesion. Thus the “normative” discussion about different approaches to activation needs to be continued in Europe.

Within the transitional labour market approach, many elements and structures that could serve as bridges between one status and another and could therefore help to master transitions have been identified and analysed (see, for example, Rabe and Schmid, 1999, Schmid, 2000, and Schmid and Gazier, 2002). Germany has some instruments that have proved their worth in practice, including “transfer companies” that prepare employees threatened by dismissal for a new job, and subsidies to help people to become self-employed. Some new instruments created to help people during transitional periods, such as the PSAs or “Ich-AG”, a state-subsidised self-employment scheme, have not yet had time to prove their worth.<sup>7</sup> What is required is normative further development of the transitional labour market approach. It is necessary to clarify which transitions should be covered and to rank instruments according to their importance. Taking the life-course approach, priority should be given to those transitions and transitional labour markets that help to prevent the long-term marginalisation of specific groups at risk.

From a life-course perspective, a very important future task will be to reorganise and support people’s first entry to and final exit from the labour market. It has to be acknowledged that the nature of both transitions has changed. They are no longer transitions in a strict sense, but have developed into complete phases of their own (Gautié, 2003). The entry phase is usually characterised by unstable jobs and short spells of unemployment. This frequently lasts for several years, until a first permanent job is obtained. The exit phase might also involve a phase of unemployment, a partial or phased retirement scheme, an early exit as a result of inadequacy, etc.

As the average active phase is now being compressed into fewer and fewer years of people’s lives, it would be an important achievement to reverse the trend towards a later entry into the labour market, in particular by better organising and condensing education at school and university and by avoiding early gaps between phases of education or between education and the first job. This applies in particular to some of the conservative and Mediterranean welfare states within the European Union.

The retirement age should be made more flexible, enabling people to decide when to make their final exit from the labour market according to their own

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7. Recent data on the “Ich-AG” scheme, however, give rise to some scepticism about this instrument, as many of the subsidised self-employed have been unable to keep their businesses going.

preferences and financial means. Some countries – among them Italy and Sweden – have reformed their pension systems with this in mind in recent years. To enable people to stay in the workforce longer according to the European Union's Stockholm and Barcelona targets (which are designed to increase the employment rate for older workers and the average retirement age), options for partial retirement that take the physical and mental tiredness of many older workers into account have to be developed or extended. Financial incentives for employers who hire older unemployed persons could also help to meet the Stockholm and Barcelona targets. A decompression of working life would help not only to restore financial sustainability to public pension systems, but also to redistribute the income risk over people's whole lives. This also means that a spell of unemployment would have less impact on people's lifetime income. A decompression of working time and its redistribution over a larger number of years of people's working lives could offer a chance to gain time that could be used for other activities during the busiest years of their lives.

#### **4. Reallocation of financial support**

The provision of reliable options for changes in working time during different life phases is an important way of reducing insecurity and combining flexibility and security. However, this must be complemented by provisions for financial cushioning in the event of voluntary or involuntary discontinuities in areas where such assistance is necessary. These schemes may be called "integrated options" (European Foundation, 2003, p. 127 *et seq.*).

One set of options to cover phases of insufficient income from work (for example, due to part-time work or sabbaticals) is oriented towards a new inter-temporal redistribution of financial means. The idea is to give individuals more freedom and options for distributing their prospective lifetime income over the course of their own life, taking into account differing needs in different phases. Some ideas in this field of action have recently been developed and promoted in the Netherlands. In 2002, a Dutch Government commission proposed to use resources from supplementary retirement schemes to finance paid leave options during an earlier phase of life (Stuurgroep Verkenning Levensloop, 2002, and European Foundation, 2003, p. 131). Giving people the option of using some of their expected retirement income earlier in life, for example to cover financial needs in the busiest period of life, when children have to be brought up and time and money are scarce, could also lead to older workers staying on in the labour market for longer. Similar ideas are being worked on at the European Commission (Jacobs, 2002).

However, the question may arise of whether younger cohorts – unlike many of today's older people – would still be able to accumulate such a reserve for old age that they could use up in advance without risking poverty in later life. New options for redistributing one's lifetime income over the whole life cycle would

give the individual more freedom and security, but ignore the fact that different groups of people have different needs during their lives. Whereas some people perform a lot of care duties – for example, bringing up children, caring for elderly relatives – others are never involved in this kind of work. The question is whether these activities are to be regarded as a private responsibility or as socially useful tasks that should be supported collectively. In the first case, the option of redistributing time and money over one's lifetime would be an adequate, privatised solution. In the latter case, new questions of interpersonal redistribution over a lifetime arise.

Because of a common concern about demographic developments, the idea that care work has to be supported by society has gained ground in recent years in many European countries: some countries have introduced new credits for carers in their pension systems, for example (Klammer and Rolf, 1998). If one agrees to the hypothesis that care work is more than a strictly private way of spending one's time, this leads to the question of what kind of collective support there could be for these time needs and this kind of work. One option would be a "care time model" which partly compensates for the loss of income from work suffered by parents or other care providers. Integrated options for workers with care obligations could be (1) a combination of parental leave with a wage replacement benefit (in line with the Swedish model of parent insurance) and (2) a combination of family-related part-time work with wage-related, collectively financed subsidies (for example, Mayer, 2002, pp. 213-215). As far as Germany is concerned, the financial means to pay for these schemes could be derived from a restructuring of the existing system of joint taxation of spouses, and the existing partial retirement scheme could serve as an organisational model.<sup>8</sup> Subsidised time credits could also be combined with the privatised saving model as developed in the Dutch "life-course" policy.

What is needed is a public debate on which types of employment interruption or limitation should, and which should not (or no longer), be subsidised by society as a whole. If we take a closer look at the distribution of work, time and money over individual lifetimes, there are good arguments for organising collective support measures in such a way that they provide assistance when people are in the greatest need of time and security – in middle age when children have to be provided for. The findings of many studies of employment records support the idea that the promotion of reduced working hours (for example, part-time work) and combinations of activities (for example, in the form of "parental part-time employment") is clearly preferable to a further extension of employment interruptions (for example, through long periods of parental leave) with regard to

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8. The German system of joint taxation of spouses is confined to married couples and in total provides about €30 billion per year for this group, irrespective of care responsibilities (Deutscher Bundestag, 2002, pp. 257-260).

subsequent employment prospects and income opportunities when the parenting phase is over (Schwarze, 2002).

One of the most urgent tasks in the restructuring of social welfare systems in line with the new needs of flexible, insecure and discontinuous life paths is to create broader access to insurance and social security systems. This is especially the case in those continental welfare states where social insurance systems have hitherto been selective, and geared towards the needs of dependent employees. In order to cushion the risks of flexibility and transitions, access would have to be opened for all who are in gainful employment, or even to all citizens (keywords: reorganisation of social insurance systems to create insurance systems for employed people/all citizens). To adjust to varying income from work over their lifetime, people could obtain permission to buy extra personal entitlements on a voluntary basis in times of high income, in addition to their compulsory contributions to social insurance. This again would be the privatised version to deal with flexibility and uncertain income prospects throughout people's lives, and would reach its limits in situations where people – due to short or discontinuous working careers and low lifetime income – were unable or unwilling to acquire sufficient entitlements to old age pensions. To solve this problem, a twofold strategy seems to make sense:

- Instead of redistributing at the end of a working career, when pension entitlements prove insufficient – under either the pensions system or social assistance schemes – priority should be given to identifying the reasons why people fail to build up entitlements and to finding ways of covering missing periods and periods of low income when the problem occurs (Vielle, 2001, and Vielle and Walthéry, 2003). This could be done by covering certain periods (such as periods of care or unemployment) by collective financing via taxes or contributions. It could also be realised by introducing new obligations for covering periods through individual contributions, for example payments by husbands for their non-working wives (as in the Swiss system). The goal must be for every citizen to build up individual pension entitlements during his or her working life, at least at the level of the sociocultural minimum (for example, social assistance). This approach takes into account the general preference for reciprocity as opposed to mere redistribution: benefits are legitimised by the contributions (or taxes) that have been paid by or for the recipient.
- To make this goal feasible, however, minimum security and redistribution elements have to be strengthened within the public first-pillar pension systems. This relates in particular to insurance systems with a strong orientation towards an equivalence between lifetime contributions and subsequent pension entitlement. The aim is not to do away with the correspondence between contributions and entitlements, but to weaken the principle of equivalence in favour of people with weak earning and insurance records.

Broadening the obligation to build up one's pension entitlements and strengthening redistributive elements in public systems could not only help to prevent poverty (both during employment phases and in retirement) among people involved in flexible employment relationships and/or with discontinuous employment records, but could also increase the awareness of employment risks.

This has to be complemented by a strategy of (better) education with a view to financial competence. Currently all kind of social security and labour market reforms in Europe point towards a strengthening of individual responsibility, for example, for one's own employability or old age pension. This could help to increase autonomy, one of the four dimensions of well-being in the Council of Europe's social cohesion tree model. However, many people just do not have a full understanding of how to organise a sustainable working career and how to deal with changes in their income over time. Actually there is a growing gap between the skills people acquire and the skills needed to plan and organise one's (working) life, income and social security. The teaching of financial competence as well as life and work skills should start while young people are still at school, so as to prepare them to live their lives in the new conditions that prevail. Otherwise autonomy will lead to social exclusion, rather than to participation, equity and well-being.

As has been shown, a variety of measures need to be combined to prepare people to cope with the negative aspects of flexibility and insecurity that pose a threat to social cohesion.

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## **II – Social cohesion and flexicurity – The example of Denmark**

*Claus Hjort Frederiksen, Minister for Employment, Denmark*

All European countries are facing the same challenge: externally, globalisation places new demands on enterprises, employees and the labour markets. Internally, the demographic development – with an increasing number of elderly people and fewer active workers – puts pressure on the welfare systems and the possibility of attracting human resources.

We cannot and we shall not work against globalisation. We must be prepared to reap the advantages of globalisation. For globalisation works both ways. We have seen this in Denmark. We have lost jobs but at the same time we have gained just as many. If we prepare and plan efficiently throughout Europe, globalisation may prove to be not a potential threat but a possibility of generating the necessary growth and employment at European level.

We must be prepared to face the competitive challenges of globalisation the best possible way while at the same time ensuring the security and wealth of our citizens. Our countries may be different but we share a number of fundamental social values that we must protect when we consider making necessary adjustments. We should inspire each other and learn from each other.

Each year in Denmark, the number of new jobs equals the number of jobs that disappear. The enterprises keep up because approximately one third of the Danish labour force changes jobs every year. One significant reason for this is that we have a combination of a flexible labour market, a high degree of security and an active labour market policy. Enterprises can adjust their human resources according to their order books and employees are entitled to social benefits and upgrading or re-education if they become unemployed.

Even though the Danish labour market is flexible, we are not blind to the other side of the coin. Given the high unemployment benefits we must constantly ensure that it pays to work and that the unemployed are available to the labour market.

The following pages describe the Danish labour market in detail. Hopefully we can be inspired and learn from each other.

### **Introduction**

With 5.5 million inhabitants, Denmark is one of the smallest countries in the world, geographically as well as in terms of inhabitants. Denmark is a wealthy society with a very actively working population and a labour market which has

quickly developed from an industrialised western European society to a labour market which is more based on high technology, modern service and knowledge. Today, it is difficult to imagine that until 1960, agriculture was the most important sector in Denmark.

In terms of wealth, Denmark ranks sixth in the world measured by GDP per capita and has ranked among the top ten countries measured by wealth for many years.

The unemployment rate is low in Denmark as compared with other EU countries, the employment rate is high, and economic growth is well above the EU average. We have large surpluses on our public finances and comfortable surpluses on our balance of payments.

Many see Denmark as a financially fit country, and it is a fact that during the international recession in the period from 2000 to 2003 any imbalances created in Denmark were quickly turned into new progress.

**Table 1 – Selected financial highlights for Denmark**

|                       | 2005            |             | 2006            |             | 2007        |
|-----------------------|-----------------|-------------|-----------------|-------------|-------------|
|                       | Economic survey | Danske Bank | Economic survey | Danske Bank | Danske Bank |
| GDP growth            | 2.4%            | 2.9%        | 2.4%            | 2.5%        | 2.0%        |
| Change in employment* | 17 000          | 20 000      | 16 000          | 17 000      | 9 000       |
| Unemployment*         | 158 000         | 158 000     | 147 000         | 144 000     | 141 300     |
| Inflation             | 1.7%            | 1.9%        | 2.1%            | 2.1%        | 2.3%        |

\* Number of persons.

Source: Scandinavian Economy, November 2005, and Economic Survey, August 2005.

Measured by production costs incurred by enterprises, Denmark is an expensive country. Wages are fairly high and so are taxes.

Hence, while having the highest tax burden per inhabitant in the OECD, Denmark also has the lowest poverty level in relative terms, due to the high degree of redistribution of income. In absolute terms as well, poverty in Denmark is very low.

Public service and economic benefits are almost entirely financed through taxes – social security schemes financed by enterprises and similar organisations as can be seen in other countries are used only to a limited extent.

Together with Sweden, Denmark ranks first among the OECD countries with a tax burden of approximately 50% of GDP. Danish income taxes on paid work are the highest in the OECD.

Social benefits for, among other groups, the unemployed are high in Denmark and the benefit period is long compared to other OECD countries.

At the same time, many people of working age receive housing benefit or child benefit, to which they themselves contribute through their taxes.

Together with, among other countries, the Netherlands, Denmark has some of the highest compensation in the OECD in respect of social assistance as well as unemployment benefit. Especially in relation to low-wage groups, the benefit system allows for high compensation.

Denmark is not unique in this respect as in particular the other Nordic countries use similar – yet different – models particularly relating to the question of job protection. When we talk about developing a modern welfare society in general terms, we often talk about the Scandinavian model.

Danish surveys show that the disadvantage of a high security level is that it may be difficult to ensure that certain groups still have an incentive to work.

### **1. Stability, qualifications and cohesion**

Denmark is characterised as a country based on stability and social security – and not without reason. The size and history of the country provides the basis for cohesion, and the welfare system with comparatively high benefits contributes to a sense of security, despite poor job protection in collective agreements, etc. Hence, the labour force is willing to take chances and change jobs.

Stability, security and many other factors most likely make a difference when, together with two other Nordic countries, Denmark is ranked among the top four competitive countries in the world. Denmark is often characterised as an attractive country based on certain factors that are decisive when enterprises decide where to invest.

Recently, the World Economic Forum identified – in the following order – Finland, the USA, Sweden and Denmark as the most competitive countries. The analysis comprises factors such as pay and taxes but also the functioning of the public sector and whether the country is stable and the labour market flexible.

Denmark's high ranking despite high wages and taxes is a result of, among other things, a flexible labour market, the availability of our labour force and the upgrading and re-education of our labour force during unemployment.

However, the survey from the World Economic Forum also points out that the burden of taxation is important and, consequently, the Danish Government has a clear objective of lowering the tax burden.

Such surveys prove to Europe that we can still create many new jobs. Even if it means losing many other jobs to the ever-increasing globalisation in which the manufacturing sector in particular outsources its production to a greater extent than before.

So, there is no unambiguous explanation of why some countries are “appealing” or why some factors benefit both the general economic situation, increasing social inclusion and, hence, a better welfare society. Seen in a globalisation context it becomes evident: China’s appeal to enterprises and industry is strong, but so is that of a number of eastern European countries when an enterprise wants to set up new production with an increasing technological content.

The point is, however, in Denmark we can maintain our appeal in that we are able to attract new enterprises and create new jobs.

A Danish analysis shows that:

- in 2002, the number of jobs that disappeared had not increased compared to 1980;
- the number of new jobs created equals the number of jobs that disappear;
- primarily young people or people with a short education are affected by jobs that disappear.

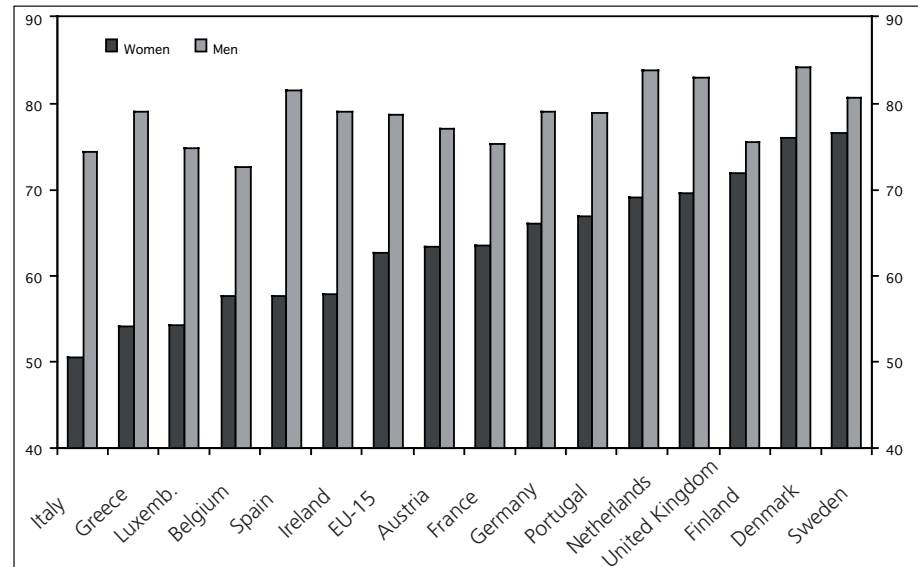
The vast majority find a new job within a year. However, it is concluded that this period is longer among the unskilled groups and slightly older employees who have experienced large cutbacks in the labour force.

In Denmark, we have a tradition of an active labour market policy based on rights and duties. The right to receive unemployment benefit and the duty to accept offers of upgrading of qualifications or re-education to ensure that jobs and unemployed workers are matched quickly.

## **2. The Danish labour market – In general terms**

The Danish labour market functions well. Denmark has the world’s highest participation rate – 84.2% for men and 76.1% for women, see Figure 1.

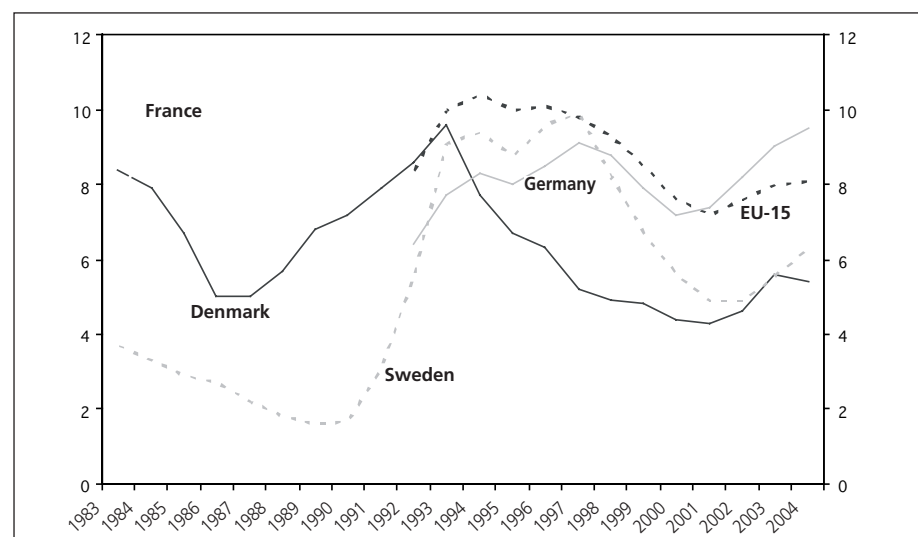
**Figure 1 – Participation rate in selected countries, 2004**



Source: OECD.

Despite high wages and taxes and, consequently, high production costs, the employment level is high (third in the OECD) and the unemployment level is low. Hence, the unemployment rate is somewhat lower than the EU-15 average, see Figure 2.

**Figure 2 – EU-harmonised unemployment rates in selected countries, 1983-2004**



Source: Eurostat.

In Denmark, this development means that in some sub-labour markets there is a potential risk that the enterprises cannot attract qualified human resources.

All the more reason to renew our focus on a targeted employment policy and the fact that all unemployed persons must be available to the labour market. However, it also leaves room for more people on the labour market – immigrants, disabled persons or others with poor attachment to the labour market.

Despite the fact that the Danish labour market is doing well, we in Denmark are concerned with the problem that many young people drop out of school with the result that they never complete the education that is required for them to gain a permanent and secure foothold in the labour market. This particularly holds true of young immigrants of whom few complete an education, making it even more difficult to raise participation and employment rates among immigrants. It is important to make an additional effort to ensure that immigrants, whose unemployment rate far exceeds that of Danes, complete a qualifying education and become part of the labour market.

### **3. The Danish model**

Some people have compared Denmark to a bumblebee: it cannot fly – and yet it does. This is important to us in Denmark, as we have to protect the basis for possibilities – or else we will fall.

What is important for Denmark is the interaction between several sub-models.

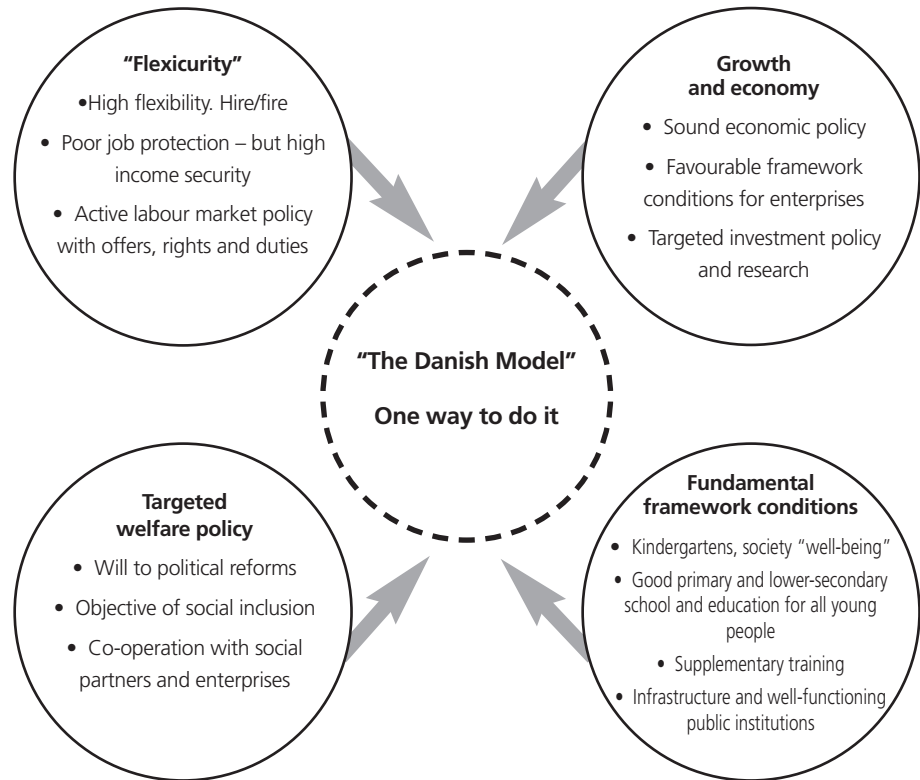
Inevitably, economic growth and favourable framework conditions for enterprises are basic requirements for raising the employment rate. And hence, to a higher degree making it possible for weak groups to become part of the labour market. In this way, growth and sound economy make social inclusion possible in a wider sense.

Looking more specifically at the Danish labour market model, the term “flexicurity” is often used as a special Danish phenomenon. However, elaborating on flexicurity also involves elaborating on other elements of Danish society which interact with and depend upon flexicurity, see Figure 3 below.

As an example, many of the fundamental framework conditions are required in order to enable other factors of importance to economic development and the labour market to penetrate.

Characteristically, the high rate of participation in Denmark is connected with the fact that we offer comprehensive daycare in the form of nurseries and kindergartens. And it is fundamental to the framework conditions and growth of the enterprises that we offer targeted and competitive education – a precondition for high rates of participation and employment. In Denmark, these factors contribute to increasing the supply of labour and maintaining a high employment level.

**Figure 3 – The Danish model in a wider sense**



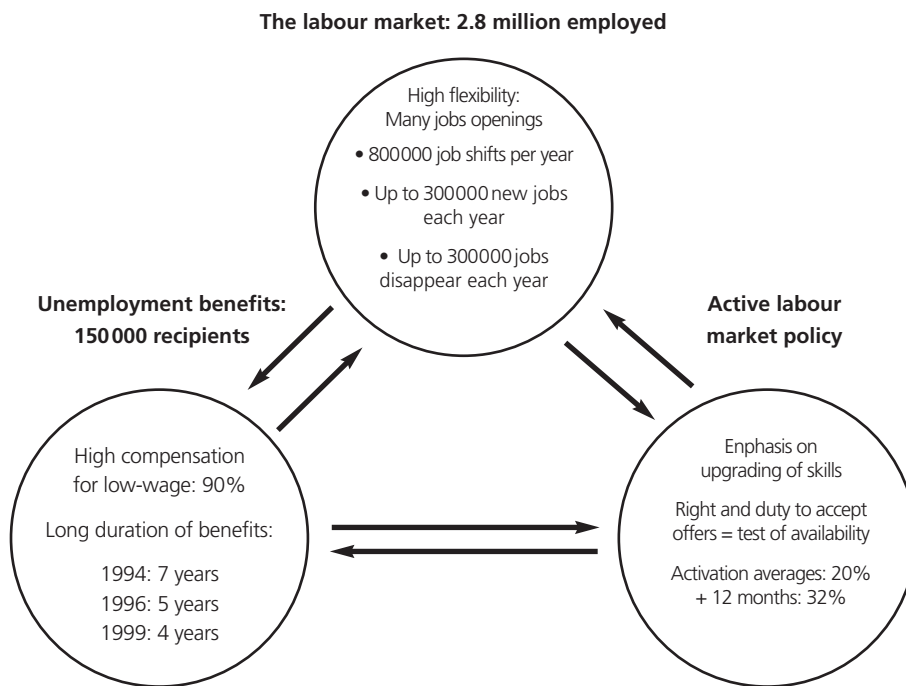
#### ***Special labour market characteristics***

Based on international surveys, the Confederation of Danish Employers (DA) recently concluded that:

- Denmark belongs to the group of EU countries with the highest employment rate and the lowest unemployment rate;
- in an international context, Denmark receives a top ranking when Danish wage earners are asked about job security;
- Denmark also receives a top ranking in terms of the wage earners' job satisfaction.

Flexicurity is a combination of the words "flexibility" and "security" and covers a mixture of a flexible labour market model and a welfare state model with a high level of security. As a third element, the Danish flexicurity model also covers labour market policy.

**Figure 4 – The Danish flexicurity model**



In Denmark, flexicurity is a special set-up based on a broad consensus in a number of areas in society, combining the interests of partners, government and citizens.

### 3.1. Flexibility

Denmark has poor job protection. It is easy to “hire and fire” employees. Periods of notice are generally very short compared to a number of other European countries. This alone means poor security and great flexibility.

Hence, other things being equal, enterprises have an incentive to hire more employees, in turn generating a high employment rate and a low unemployment rate. Due to close relations between the partners, flexibility can to a certain extent include other areas (working hours, pay).

Compared to other countries, the social partners in Denmark have reached a consensus in critical areas, to a great extent they really are partners rather than parties. The partners communicate at all levels, centrally as well as decentrally, including at enterprise level. They often take concerted action on questions

concerning labour market policy because they often find themselves in the same boat when it comes to the question of upgrading the labour force.

Unlike the parliamentary system, the social partners often try to balance expectations and positions or get in step on certain issues.

Denmark has one of the highest rates of unionisation in the OECD. Furthermore, the partners agree on and plan a wide range of issues in connection with the collective agreements, that is without government intervention or overall regulation. Such issues include, for example, wages, working hours, holiday and pension as well as agreements on maternity/paternity leave. The social partners also influence the implementation of the employment effort.

### *3.2. Security*

The unemployment security level is high. Compensation is very high in, among other systems, the unemployment benefit system and, hence, the welfare system “compensates” for the high labour market flexibility. It also reflects the Danish allocation and taxation policy:

- there is a very high degree of redistribution between income groups, primarily via tax-financed transfer payments;
- there is considerable redistribution between generations. Young and elderly people receive comparatively high welfare benefits, primarily financed by high personal income taxes for actively working people. Over a lifetime, an average Dane receives the same amount as he or she pays;
- the redistribution and tax policy model can be characterised as a kind of collective insurance scheme for all the welfare systems taken as one. Premiums are paid according to income and everyone has equal/free access to a number of benefits and public services such as, for example, state pensions, education, hospital treatment, etc.

### *3.3. Upgrading of qualifications and offers*

Through an active labour market policy, the unemployed are offered an opportunity to upgrade their qualifications. This effort is also based on the “right and duty” concept. All unemployed must be available for active offers and specific jobs.

This model is efficient because there is consensus regarding the necessity of the individual elements. All players – government, partners, enterprises and citizens – benefit from this model and in principle, tasks, rights and duties are necessary to make the model work.

During recessions, enterprises can quickly adapt the number of their employees according to finances and production. Hence, the government must ensure

income security for dismissed persons, who face adjustments and upgrading of qualifications. When the market trends turn, the employees are available. Low security also gives the enterprises an incentive to quickly adjust the number of employees upwards. At the same time, these possibilities generate expectations of hiring as many employees as possible. This means that both government and citizens benefit. Furthermore, cohesion is strengthened in several ways (weak groups, elderly unemployed, immigrants, etc.). Over time, the citizens are expected to expand their relations with the labour market regardless of market trends.

This model, and the fact that it seems to be working in Denmark, is one of the reasons why development in Denmark from a general labour market perspective is satisfactory, with a high employment rate, a low unemployment rate and quick adaptability. Hence, unemployment seems to be permanently lower than in a number of other countries, regardless of changing market trends. Additionally, the Danish economy quickly recovers after a period of unfavourable market trends which internationally may have had unfortunate consequences.

In Denmark, we believe that the three fundamental elements of the flexicurity model have a positive effect on adaptability and adjustment speed, enabling Denmark to better utilise the possibility of generating positive developments in the labour market.

However, the model has its flaws. It is comparatively expensive, a fact often pointed out in international evaluations. And it is true that the expenses for welfare services, labour market policy, etc., are considerable.

However, for a number of reasons, the costs of the flexicurity model cannot be specified explicitly. First of all, in its policies, Denmark emphasises high social security, meaning that people can actually live on their transferred income without losing their financial incentive to work. Hence, the high expenses for, say, unemployment benefit are based on a question of welfare and equality, not just flexicurity.

Secondly, the high costs of security benefits and the active labour market policy can be seen as an investment in labour market qualifications much like investments in education/research, etc. Consequently, it is difficult to measure the return on these costs. There is no point in investing in favourable framework conditions for enterprises if we do not at the same time invest in education, etc., for the people working there.

In Denmark, flexicurity has other aspects. Dialogue on the labour market policy, which is to be adjusted regularly, is called for and priority must be given to ensuring efficiency and quality in the labour market policy through appropriate offers.

In light of the development in the Danish labour market it is very important to ensure that the unemployed are available, and it may be difficult to maintain the balance of income security for unemployed persons when certain groups in

society only have limited incentive to work, namely when benefits are high and the security period is long. These are some of the ongoing welfare dilemmas discussed in Denmark.

#### **4. Globalisation and long-term challenges**

As in all other European countries, Denmark has reflected on the long-term effects of globalisation, the new international division of labour, the production and knowledge society, demographic development and an increasing dependency ratio.

These changes influence both labour market developments – in some sectors we will have to adapt to knowledge jobs instead of manufacturing jobs – and society as such.

In short, the question for Denmark with our high welfare costs is how to ensure and develop our welfare society. Globalisation must be used proactively to turn the Danish labour market possibilities into reality.

The Danish labour market has a favourable starting position. Denmark has an employment rate that is already higher than the joint EU objective of 70%, and the same is true for the objectives of participation of women and elderly persons in the labour market.

In Denmark, we focus on potential problems for specific groups, for example, following relocation of production facilities. Examples include unskilled and elderly employees, who may face the highest risk of losing their jobs in the industrial sector and find it difficult to get a new job. Analyses show that the number of jobs we create equals the number of jobs that disappear, some of which have been outsourced. And it seems that the number of jobs created and lost does not seem to be increasing considerably. Overall, one employee in three shifts to another job each year, and each year, one in ten jobs disappears for the benefit of a new job.

However, globalisation has become visible in connection with the ongoing development of the labour market.

##### ***Example: the Danish steel-rolling mill in Frederiksværk***

In the summer of 2002, the steel-rolling mill in Frederiksværk was declared insolvent, resulting in approximately 1000 employees losing their jobs. Many of these employees were over the age of 50. In Denmark, certain initiatives (education, guidance, etc.) can be targeted at persons during their period of notice, that is before they become unemployed. Intensive efforts were initiated for many of these persons with offers, etc. As a result, in 2005, three years later, only 18 people are unemployed. Only four have been unemployed since 2002.

Hence, what we see today in respect of globalisation is to a certain extent the “job development” that we have been witnessing for decades, although at a slightly higher speed. In Denmark, we have seen large enterprises closing with dramatic consequences for the affected local communities. However, experience tells us that with a targeted effort, we can find jobs for the vast majority of these people.

Furthermore, globalisation means seeing competences in a new light as knowledge and adaptability are vital qualifications to ensure the competitiveness of an enterprise. In Denmark, we work with strategies on education and competences, from strengthening primary and lower secondary schools to improving research efforts.

Hence, we are committed to getting better at what we already do comparatively well, which is also connected with significant fundamental elements of the society model.

In its *Employment outlook*, the OECD, like a number of international economists, states that the problem of globalisation is not necessarily solved by minimising costs. Security benefits and upgrading of qualifications offered to persons involved in mass dismissals are recommended as a method for quickly redirecting unemployed persons to new sectors/jobs. American researchers recommend that the strengths of the welfare society are used to actively develop labour markets and reap the benefits of globalisation.

The Danish Government has set up an impartial Welfare Commission, which has prepared a report on the long-term consequences of the population development and the challenges we face in connection with solving the problems. The Welfare Commission has been given the task to suggest specific solutions and render its opinion in all welfare areas.

Consequently, Denmark has resumed the discussion of the welfare society. Not in order to weaken the welfare society but to discuss and possibly carry out initiatives which improve the sustainability of society in the long term, with more dependent elderly people and fewer workers to finance this dependency.

According to the Welfare Commission, its analyses show that a heavy increase in the effective labour supply (with the appropriate qualifications) or a comparatively marked increase in taxes is required to finance the welfare society in 2025. At the beginning of December 2005, the Welfare Commission presented its suggestions; the Danish Government will now start a dialogue concerning the need to find long-term solutions.

**Figure 5 – Challenges to the Danish labour market**



Source: Welfare Commission.

In Denmark it is difficult to keep discussions of the various welfare themes apart because they are very much related. Hence, the overall discussion in Denmark concerns the following issues:

- How do we increase the power of cohesion in society, how do we ensure that weak groups get a foothold in the labour market, and how do we ensure better integration of immigrants in the labour market?
- Where is the challenge in the continued development of the labour market, when globalisation has both positive and negative consequences?
- How can we safeguard and strengthen the welfare society in the long term given the marked demographic changes?

Although differing in priority, this discussion is on the agenda of many European countries. As Denmark sees it, the solution to long-term problems is not a limitation of the welfare society. Experience from recent years shows that the Danish economy is thriving and that the labour market develops very positively, indeed. At the same time, Denmark, along with a number of other countries, is recommended in terms of its economy, competitiveness, labour market development, etc.

Hence, one element of the Danish discussion is that in terms of demography and integration, globalisation and long-term challenges must not lead to social competition between countries. Saving is not a way to meet these challenges. Instead we should use the strengths of our society model to solve the problems in future. So far, this has proven to be quite an efficient way to do it.

### **III – Restructuring and workers' rights in Europe: the move towards “transitional” management**

*Bernard Gazier, Professor of Economics, University of Paris 1 Panthéon-Sorbonne*

#### **Introduction**

There is often a sharp contrast in Europe between the scale and complexity of restructuring arrangements and the meagre results they achieve. Workers caught up in a large-scale redundancy process have difficulty in finding an equivalent job to the one they have lost; more often than not they have to accept a considerable drop in income and many of them inevitably find themselves relegated in one way or another to a less favourable position. This is a traumatic event in itself, since the sense of security deriving from the prospect of ongoing employment in a company is suddenly no longer there, but in addition the consequences for most of the employees in question can be dire. The only secure option available to the over-50s is often early retirement, which explains why such schemes persist in many countries even though they have been widely criticised for being costly and irreversible.

This is a worrying situation for social cohesion in Europe. The Council of Europe's European Committee for Social Cohesion believes that social cohesion is currently under threat and has warned of the dangers of a growing social divide resulting from excessive disparities and exclusion processes (European Committee for Social Cohesion, 2004).

All the same, in recent years the efforts made to organise these massive job losses and provide assistance have undoubtedly improved and reflect a willingness to adopt wherever possible best practices which show greater concern for the workers' career paths and seek to help them get back on their feet. This paper will focus on one of these examples of best practice and look at both how it could be applied on a wider scale in Europe and the political and institutional consequences thereof. It will draw heavily on two areas of studies: (i) the changes which affect restructuring in the Europe of today (Carabelli and Tronti, 1999, and Gazier, 2005b), and (ii) the “transitional labour markets” (TLMs) which offer significant positive and regulatory scope for studying and reforming the labour market and the social welfare system in order to modernise the latter and promote social inclusion (Schmid and Gazier, 2002, and Gazier, 2003b).

First, we shall look briefly at the challenge posed by the current form of restructuring in Europe and the economic and social policy responses that are put forward. We shall then present and analyse the clear-cut contrast between a series

of unsatisfactory practices frequently seen – and criticised – in a country such as France, despite the often major efforts made, and the example of a consolidated national approach which appears to have broadly escaped such difficulties: the “labour foundations” of Austria. Lastly, we will show that moving towards better collective control of restructuring in Europe does not presuppose directly “cloning” an example of best practice but rather implies that the change in approach should be tailored to the great diversity of national contexts, and that responsibilities be redefined on the basis of a new framework for negotiation.

### **1. The changing face of restructuring in Europe**

Many observers believe that Europe, with its delays and rigidities, has entered a necessary but possibly painful period of “flexibilisation”. Pressure for deregulation is as inevitable as it is legitimate and only rearguard or corporatist resistance is blocking its path. This merely postpones deregulation, making it even more difficult. Such a view is refuted by numerous observations and I do not intend to subscribe to it in this paper. If we consider the concept of flexibility, it is clear that it is very rarely defined with any great precision whereas it is used to cover a wide range of meanings. Nonetheless, flexibility only becomes meaningful in relation to a set of interconnected variables. It must therefore be assessed in the context of a network of causal interdependences. Accordingly, flexibility should not be confused with the volatility of a variable; rather it relates to the associated variations of one or more variables which are deemed necessary for the adjustment or balancing of a system. These variables mean nothing unless one first of all identifies the fixed points in relation to which the adjustments will be made. Widespread flexibility is therefore a concept which is meaningless. It is basically a matter of identifying, creating and then managing the variations which are needed. From this point of view, the variety of national (or indeed local) experiences and institutions shows that there can be many different approaches, both temporal and spatial, to the process of adjusting to globalisation. Restructuring (and how it is dealt with) provides a good illustration of this.

Historically speaking, while restructuring is as old as capitalism itself, it has nevertheless for a very long time been regarded as an occasional occurrence, brought about by the need for urgent action in line with circumstances. In the current globalisation context, where there is a growing interconnection between markets at world level, the trend is such that restructuring can be viewed if not as an ongoing process, admittedly with peaks and troughs, at least as an ongoing risk.

Looking back over the past, we can see that the practices with which we are now familiar generally fall between two options. Either one does nothing and lets the firm shed its workforce as it sees fit, with the affected workers benefiting solely from existing arrangements such as unemployment benefit and possibly public policies to assist with mobility and work placement; or one tries to delay,

or if possible prevent, the process of job losses. The current approach to restructuring is geared not towards preventing this from happening but rather towards a combination of public aid and measures taken by the firm shedding jobs. This is not a process that occurs automatically, but is one that has been adopted in the wake of specific experiences. In the 1960s, for example, the European Coal and Steel Community (ECSC) first of all, in the case of France and in response to pressure from the French authorities, opted to delay the closure of mines while it worked out a range of measures to be implemented in parallel with a process regarded as inevitable.

This “intermediary” strategy was pursued on a wide scale in Europe in the 1980s with the loss of jobs in industry (metallurgical industry, shipyards). It was at this time that the practice of large-scale early retirement opportunities emerged, brought about by the difficulties of retraining an ageing workforce with few skills or skills which were difficult to apply to other sectors. A leading role then passed to another set of stakeholders and means of action: public authorities, at both national and local level, brought into play a series of measures, especially “active employment policies”, designed to help workers who had been made redundant find another job. But the large number of different players and measures posed a threat to co-ordinated action, and accordingly this resulted in the emergence of an integrated approach to dealing with the effects of restructuring: “packages”, so to speak, combining measures, players and funding.

But this then raised an important question, which is still unanswered today. Should one frame and implement policies reserved exclusively for workers being retrained, or is it enough to give them access (facilitated access possibly) to what is available for all the unemployed? The US approach for “displaced workers” is an example of the first option. Back in the 1960s, the Trade Adjustment Act (TAA) limited entitlement to a series of specific measures exclusively to workers who had lost their jobs as a result of the liberalisation of external trade. The eligibility conditions were, moreover, extremely restrictive. European countries, which have often framed employment policies on a much larger scale than the US, generally chose the second option, with collective intervention and possibly special funding, but on the whole there were no separate or specific programmes for workers who had been made redundant as part of a collective restructuring exercise.

In response to recent developments where restructuring, as we have said, is now becoming an ongoing risk, today there are two major trends: (i) “proceduralisation” and (ii) “activation”.

There are two elements to proceduralisation. First, the tendency to set out, in legislation or in binding arrangements, a sequence of obligations and stages to be complied with in any process of collective redundancies. Second, the increasing use of the courts to rule on employment matters and the termination of an

employment contract. Depending on the particular consequences, these two elements make proceduralisation a “hard” or a “soft” process.

The French approach can, for illustration purposes, be contrasted with the US approach, but paradoxically there are also some similarities. The obligations to which French firms are bound are set out very precisely in the “plan social”, the collective redundancy programme, a very formal and elaborate document, which lays down a number of stages which must be complied with, failing which the whole procedure is cancelled. The programme, drawn up by the firm, has to be submitted to the trade unions and the public authorities which may force the firm to put forward other proposals. We have already referred to the obligation to provide adequate resources, which lies at the very heart of the programme and its implementation. This is an example of a “hard” version of proceduralisation.

However, it would be inaccurate to portray the US situation simply as more permissive, for two reasons. First, the full range of anti-discrimination legislation comes into play in the case of redundancies and American company directors must carefully justify their choice of workers to be made redundant: for example, in the case of an older worker, could the latter argue that this was against discrimination? Then, in France, there is a constantly growing body of legislation designed to make work contracts more flexible (regarding working time, pay, duration) and conditions for terminating contracts less rigid. The two cannot be said to balance each other out, but proceduralisation has become very widespread and has resulted, in the US, as in France and in Europe, in increased use of the courts, replacing or complementing the power of the trade unions.

The trend towards activation is leading to a shift in the priorities of public employment policies from income replacement benefits to a greater emphasis on the job-seeker's own initiative. It is apparent in various forms. One way is to maintain (or even increase) expenditure on benefits (“passive” expenditure in the terminology of the OECD) but at the same time increase expenditure on placement, employment subsidies and training the out-of-work (“active” expenditure). Another option is to reduce the former in order to increase the latter, or to convert all or part of the passive expenditure into active expenditure. Above and beyond these variations in public employment policies which have direct repercussions on the unemployed's standard of living, activation involves organising the steps taken by the out-of-work in such a way as to continually guide them towards employment, through regular interviews, advice, penalties if they fail to be actively seeking work, etc. This is reflected in all the tax and social welfare arrangements designed to ensure that it is worthwhile taking up a job, even if it is poorly paid or has no promotion prospects. Hence the motto “making work pay”, also popularised by the OECD and now used on occasion by the European Commission.

The consequences of this are very clear with regard to restructuring. On the one hand, it has become a priority to get workers actively seeking a new job, and on

the other, the activation approach is a head-on criticism of early retirement and a strong recommendation that this be done away with altogether. Extensive opting for early retirement is bad for two reasons. First, it puts out of the running, at great expense, a potential workforce in a context (ageing of the population) where a longer working life is seen as essential both for financing pensions and for maintaining growth. Second, the large-scale availability of the early retirement option, often seen as a right by workers threatened with restructuring, nurtures a sense of apathy among other older workers and dissuades firms from taking them on.

We can now move on to describing the current situation in Europe as regards policies for dealing with restructuring. Such policies tend to involve a large number of regulations governing how the affected workers are treated. However, many of them are increasingly posing a challenge which could result in an impasse. The majority of the workers affected by restructuring come from an industrial environment which has been unable or unwilling to adapt them to current conditions; they are not very mobile and their skills cannot easily be transferred to other areas, yet these are the very workers who will be subject to the pressures of activation at a time when the early retirement escape route is under fire from all quarters and is in the process of being blocked off. There is a danger therefore that they will be trapped in a resolutely negative dilemma: either they risk following a course of training for which they are not really prepared and then try to make a go of it in a new, hostile world, or they join the unprotected ranks of the unemployed, with probably no other option but to rely on welfare benefits.

It is not surprising therefore that there is an accumulation of pessimistic expectations which shape the choices made in the case of workers with few poorly-transferable skills, who are nonetheless supposed to be protected by the official obligation to help them find a new job and provide active assistance measures. In the new context of ongoing restructuring and constant pressure for immediate adaptation, traditional forms of assistance are no longer appropriate and the requirements of the new approaches all too often serve to discourage and then eliminate them.

Paradoxically, however, this impasse in which the less-skilled find themselves has emerged at the same time as the increased recognition of a new generation of economic and social rights supplementing the traditional provisions of the welfare state. While this might be an over-simplification, it could be held that the rich are protected by their heritage in coping with the unexpected in their working and personal lives, while the poor are protected by the group of rights which together define labour law and social security schemes: not only minimum wage, trade union activity, regulations on working hours, but also health insurance, pensions, unemployment benefit, etc. Accordingly, it is a combination of stabilisation in the employment sector and social security that is supposed to

take care of the consequences of an illness, pregnancy, redundancy, etc. This combination is, moreover, of capital importance in the various welfare state models, both the “continental” and Bismarck approaches, largely financed by social contributions (for example, Germany and France) since it is access to stable employment that grants access to the various forms of protection for workers and their families, regarded as entitled right holders. The connection is looser in the Beveridge models (for example, the United Kingdom and most of the Nordic countries) financed out of taxes, but in the final analysis, social integration and the security of the majority in all these models depend on “full employment in a free society” as Beveridge himself put it.

This new generation of rights can be defined as rights which coincide with movements on or around the labour market. These rights are a means of coping with the unexpected in one’s working career and personal life: the right to life-long education, vocational evaluation, parental leave, right to career guidance and individualised redeployment, sabbaticals, transferability of company pensions and accreditation of experience acquired, etc. These are all a means of dealing with the career variables throughout one’s life. In a manner of speaking, these rights sum up and extend the employment policy measures gradually developed in the majority of western, and especially European, countries since the 1970s. These included, as we have seen, income replacement and active measures such as assistance to the out-of-work in training and finding a job. The above tendencies towards activation are part of a broader development of preventing social exclusion in the transitions between periods in and out of work, in accordance with the needs of and opportunities available to individuals.

Today, there is a growing number of diverse policies and measures in Europe which seek to ensure smooth employment transitions. It seems only logical that workers affected by restructuring should be the prime recipients of assistance with redeployment and mobility. However, in view of the constant threat of “flexibilisation” and, in some countries, continuing mass unemployment, can such practices and principles be more than just ambitions?

## **2. The search for smooth transitions**

To illustrate the point, we shall look at the difference between practices often seen (and criticised) in France and what are considered to be exemplary practices, implemented in Austria. I am being deliberately provocative here. France has seen some fairly successful or socially acceptable examples of restructuring. But it has also seen, and this is what I wish to highlight, many examples of disastrous management, including very recently. In contrast, not only is the Austrian example far removed from these negative processes, it has also channelled the choices made by the public authorities and the social partners in an innovative and readily identifiable institution, the “labour foundation”. We shall then look more closely at the nature and significance of the difference between these two

approaches. To this end, we shall present the transitional point of view and apply this to the transitions overseen by the Austrian labour foundations.

### *2.1. The French “disaster scenario” and the Austrian “good practice”*

There are typically five components of the disaster scenario seen all too often in France in the process leading to a collective redundancy programme (CRP) (Gazier, 2005a).

1. Notification to the trade unions and the public, left as late as possible, is abrupt and fosters a climate of urgency and anxiety. The number of workers involved and the proposed arrangement for termination of contract are kept secret as long as possible, before being announced at one and the same time.

2. The CRP procedure is initiated. This is a complex, formalised and slow process. The law places upon the company a duty of redeployment, a duty relating to means not result, and the CRP is the company's responsibility – under the supervision of the trade unions and the public authorities. A redeployment unit is set up for one or two years.

3. The workers to be laid off are selected by the firm or a consultancy agency, on the basis of those who are less adaptable, less skilled or older employees, who might be chosen because of their age, during a series of interviews. This creates a deplorable social climate in which those to be laid off feel “condemned” while the others feel they are living on borrowed time and keep a low profile. Even before they have left the firm, those to be laid off have acquired a poor reputation and are stigmatised as the “losers”.

4. The protests from those to be laid off, often employees with strong trade union connections who have worked for the company for a very long time, enable them to obtain the support of the local and national authorities. In addition to the redeployment assistance initially provided for, they are given other resources, often significant but specific to the case in hand. Training initiatives are limited, especially given the average age of the people concerned.

5. Redeployment is therefore extremely difficult. Typically, two years later, half of those laid off have found another job, but often a rather insecure one, and the rest are on early retirement or out of work.

Here, there is injustice on two counts. First, those to be laid off are singled out, resulting in stigmatisation. Second, this is over-compensated for by providing large-scale additional aid to which other people out of work, not included in the collective redundancy process, are not entitled. So we have two examples of injustice to two different sets of people; neither re-establishes justice, both generate tension which is hard to eliminate and both are ineffective because they demoralise the workers being redeployed.

This tragic sequence of events, involving both a loss of employment and an impasse, may occur despite the earnest efforts deployed by the national and local authorities, those laid off themselves and the firms in question. Among the options available, ostensibly solidarity moves, we find the systematic offer of total early retirement, meant to provide a respectable way out for older workers deemed to be less adaptable and surplus to requirements, and attempts, at least verbal, to engage in forward employment and skills management, intended as a means of preventing similar massive lay-offs in the future. However, it has become increasingly clear that early retirement can be justified only in very specific cases, where it is basically a social measure for certain categories of workers who have reached their “sell-by date” too early, and comprises numerous drawbacks. Forward planning, on the other hand, rarely goes any further than wishful thinking. There is accordingly a systematic disparity between words and deeds, fuelling distrust and pessimism.

The Austrian approach of “labour foundations” (*Voest-Alpine Stahlstiftung*) dates back to 1987 and began with the initiatives taken by the social partners during the round of redundancies at Voest-Alpine, the big steel production company. It has been closely studied and assessed (Winter-Ebmer, 2001). Let us look, one by one, at the components of the sequence of events described above.

1. The planned restructuring was announced six months in advance, allowing time for collective dialogue and individual initiatives.
2. The redeployment unit was a company foundation, meaning that it functioned by means of capital provided for that purpose by the company laying workers off. This meant that it was independent and stable and would remain up and running as long as was necessary. There were three other sources of funding in addition to the income from its capital: public funds under employment policy, a significant proportion (roughly a third) of the redeployment payment received by those laid off, and a small contribution paid by the workers who kept their jobs (0.2% of the payroll), intended to fund the training of those laid off.
3. The workers to be laid off were volunteers, of varying ages and skills (reflecting the average composition of the company) and were seen as dynamic employees seizing an opportunity for career advancement or gaining new experience. The social climate was therefore much healthier, and solidarity between those laid off and those remaining was maintained.
4. The workers laid off were given individualised training and guidance, all of which was viewed as a key component of the redeployment exercise.
5. This led to extremely positive results for the redeployment of employees who made use of the foundation and its training programmes. Winter-Ebmer (2001) was able to compare between 1987 and 1998, the career development over five years of the workers who went through the foundation and those from the

same firms who became unemployed following redundancy during the period in question. Those who went through the foundation fared much more favourably, in terms of both the likelihood of finding lasting employment and probable wages.<sup>1</sup> He also made a cost-benefit analysis showing the long-term viability of the scheme.

We must be careful not to paint too rosy a picture of this second approach. There is nothing inherent in it that creates jobs. In contrast, it does not destroy, but rather strengthens, the employability of the workers being retrained. The fact that the foundation remains operational as long as it is required introduces a stable prospect dependent on achieving a result, and the heavy investment of the workers laid off themselves has a similar effect. The sharing of responsibilities between the company and the other stakeholders therefore does not introduce the duty of redeployment which in France means that each “client” of the redeployment unit must be offered a predetermined number of valid job offers without any real thought being given to subsequent career prospects. Rather, the Austrian approach commits each player to a demanding and active process of collaboration.

## *2.2. A transitional analysis*

As we have seen, these exemplary practices involve better anticipation and management of workers’ career paths and collective forms of assistance, and help build confidence. We shall consider what exactly this covers by referring to a research and action approach focusing on transition: the TLMs. Numerous presentations of TLMs have been made (see the references in the introduction; a rapid overview is also given in Gazier, 2003a), so here we shall merely give a brief summary of the approach and the associated principles, and then apply them to the Austrian labour foundations.

The concept of TLMs emerged in the early 1990s out of the pragmatic deliberations of the Wissenschaftszentrum Berlin economists Günther Schmid and Peter Auer. Initially they were intended as a means of reforming employment policies. Taking on board the constantly shifting dividing lines between paid work, personal activities and socially useful activities, the advocates of TLMs focused on the transitions an individual may be faced with both in and around the labour market, in order to identify desirable transitions and link them to new rights. TLMs have been defined as the systematic and negotiated organisation of the various transitions (change of job or status, different types of leave, promotion, etc.). They are described as systematic because transitions are seen from the point

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1. It should be noted that, because of a lack of appropriate data, it was not possible to select a comparison group which would show the career development of equivalent workers laid off in another European country. Such a comparison has still to be made.

of view of interaction, and negotiated because public employment policies are too often unilateral and should be once again part and parcel of the management, by the players themselves, of their career and personal development prospects. In practice, it is a way of combating exclusion by multiplying the opportunities available to workers and in so doing putting pressure on companies.

A second research and action approach, supplementing TLMs, emerged at the turn of the century (see Gazier and Schmid, 2001), advocating reform of the employment relationship by a redistribution of the risks and opportunities inherent in productive activities. In particular, TLMs strongly recommend an increase in the rights and options available to employees, enabling them to redress the balance of power which is unduly weighted in favour of shareholders.

Looking at the proposed reforms of public employment policies and the employment relationship, we see a third possibility emerging, which we shall just mention in passing: TLMs could form the central part of a new social model, an alternative to the social liberal model, as suggested, for example, by Giddens (1998). Broadly speaking, this “renewed social-democrat” model seeks not only to equip people for the market, as in social liberalism, but also to equip the market for people (see Gautié and Gazier, 2003). It involves supplementing the conventional social protection provided by the traditional welfare state with the new rights referred to in section one, in the form of social drawing rights, whose implementation comes under collective supervision.

Having looked at the various types of research and action, we can now briefly focus our attention on some of the distinctive features of TLMs. The main fields of transition are well known: transitions within employment, between employment and training, between employment and inactivity (retirement, disability), between employment and unemployment, and between employment and socially useful activities (domestic work, voluntary work, activism).

There are four principles which define smooth transitions.

- increasing individual freedom (or autonomy) by giving people more power, not only in financial terms via transfers, but also in terms of participation in the employment and deployment decisions that directly concern them. In exchange, participants in the labour market could agree to accept more risks, more duties and more obligations;
- promoting solidarity in managing social risks and associated labour market risks. This presupposes the involvement in redistribution programmes of the workers who run less risk or are in a better position to bear them;
- seeking the effectiveness of measures accompanying transitions, via a process of specialisation, co-ordination and co-operation. More often than not this takes the form of a mix of public and private contributions to the formulation and implementation of corresponding policies, and presupposes negotiated decision-making arrangements;

- Mobilising the full range of risk management techniques: monitoring, evaluation and self-regulation, by means of a broadly decentralised approach or through management by objectives. This requires better joint management by the players concerned, whether at company, local or regional level.

The TLM approach is a comprehensive one: one person's mobility depends on everyone else's. It places an emphasis on local negotiations involving a variety of players who are potential co-fund providers. It does of course raise a number of implementation-related questions, focusing in particular on the cost and consistent nature of local negotiations. As far as cost is concerned, TLMs first of all involve a realignment of existing measures, and are able to benefit from co-funding, including from the worker making the transition, and clearly each and every participant has an interest in a successful transition. So, rather than new expenditure, it is really a case of the local players using the often very large sums of money earmarked by the state for employment policies. Cost-control conditions can therefore be introduced. The question of consistency could be an issue where rich regions might be able to offer an elaborate transition system while poorer regions could provide just a minimum offer. Such inconsistency could be addressed by means of transfers by the nation state (or Europe); this presupposes identifying and using criteria geared to local transition needs.

In the light of this approach and these proposals, the Austrian labour foundations represent just a local, partial scheme, where logic demands more comprehensive action. It can nonetheless easily be shown that even taken in isolation and bearing this limitation in mind, they still comply with the four TLM management principles.

- first, they introduce greater choice for employees ("empowerment");
- they build up solidarity between the various categories of workers, in this case, those to be laid off and those who remain;
- there is a clear attempt at efficiency. It is in everybody's interest for staff to be redeployed both quickly and satisfactorily: the firm, which will ultimately be able to recover its capital, those who remain, who pay a contribution, and those laid off who allocate part of their redundancy payment in a process of co-investment;
- lastly, the process is managed in a decentralised way, and the Voest-Alpine Stahlstiftung has served as an umbrella organisation for the redeployment units of other companies.

It is clear, therefore, that the Austrian approach has a lot going for it. But is it an elaborate example of a good practice which might not be transposable to other contexts?

### 3. The various approaches to “protected mobility” in Europe

As we have seen, the TLM approach is a systemic one, focusing globally on a range of aspects often conceived and managed separately: employment, social welfare, working conditions and social dialogue. In this respect, it ties in with the integrated priorities highlighted by the Council of Europe’s Social Cohesion Strategy (European Committee for Social Cohesion, 2004): simultaneous promotion of decent employment and access to social rights, an emphasis on the role played by the social partners and a multidimensional approach to the fight against exclusion. However, the difficulty arises in applying this very general view to the variety of national contexts, particularly marked in the field of restructuring. Because this is such a difficult issue, the following is largely exploratory.

We shall look at the question from two angles. First, we need to gauge the diversity (or indeed the deep-rooted nature) of the practices, constraints and opportunities in the different countries or regions. Then we shall attempt to adapt general recommendations to the variety of contexts and situations. We shall do this by outlining a series of priorities and intermediary and cross-sectoral principles. For our purposes, the new rights emerging for workers demand a new model; this means reflecting on new institutions and a new way of organising social and employment policies at European level.

#### 3.1. *Restructuring: the diversity of national approaches in Europe*

It would be a grave mistake to consider that there was uniformity in the various approaches adopted in dealing with restructuring in Europe. Clearly, in Europe as elsewhere, they all follow the same underlying pattern – an announcement that there is to be a reorganisation and redundancies, followed by a phase of dialogue or negotiation in one form or another which in turn results in a series of measures: selection of the workers in question, compensation, setting up of redeployment units, and lastly implementation of these measures with ambitious or not-so-ambitious evaluations and occasionally, corrective or additional measures. However, above and beyond the similarities in stages (and sometimes in terminology), the differences can be significant, and the negotiation stage can vary from being unilateral to shared management. Even the “collective redundancy programme” can involve very different practices (MIRE 2005). In Germany, it is the responsibility of negotiations between the management and unions. In France, it is an official document drawn up by the company which has to be approved by the Ministry of Labour. Admittedly, what goes in it is heavily dependent on negotiations and the power relationships between the unions and the company, but at the end of the day it is the company that has the initiative, under state supervision.

This variety must obviously be correlated with specific national or local features, but it is also part of a picture which goes beyond mere restructuring, involving

all the aspects of labour market mobility and adjustment, which can be termed national employment schemes and employment policies (Gazier, 2005c).

Looking in a radically abstract way at labour market adjustments, whether they are a result of demographic pressure, macroeconomic “shocks” or technological innovations which are favourable or harmful to a given category of companies or workers, we can identify three aspects of adjustment. Adjustment can relate, alternatively or simultaneously, to price, quantity or quality. Prices on the labour market are clearly wages, quantities are the number of workers (in or out of work) and the volume of hours on offer, while quality corresponds to worker training, of varying degrees of sophistication and versatility. Clearly, all these aspects come into play in all countries, but equally clearly to differing extents, depending on the contexts and the institutions.

Different approaches are adopted and may be long-lasting depending on the aspect focused upon and the institutions involved. In a market-oriented approach, for example, price (wage) adjustment will be predominant and the economic policy adopted will allow this price mechanism to operate, but ensure that it does so fairly and transparently, and offset any negative aspects with the least level possible of intervention. Significant priority is consequently attached to the fight against discrimination in all its forms and to ensuring there is a minimum safety net there for those who lose out, who are supposed to be subject once again as soon as possible to the rules and opportunities of market forces. This does not mean that no quantity or quality adjustment is made, but such adjustments will be considered less of a priority (and possibly criticised) or closely linked to wage adjustment and market needs. In the case of restructuring, such an approach tends to focus more on redundancy expenditure rather than providing any specific arrangements outside the general placement and training measures set up by public or private employment services. The latter are conceived in a somewhat restrictive way, so as not to interfere too much with the operations of the market players. These forms of interdependence constitute as a whole a national set of practices and institutions, an employment scheme and employment policy. This is what happens in the United Kingdom. The result for workers’ career paths is a risk of significant income loss for the less well protected and those who receive a lower level of redundancy payment, but also a rapid return to work, even though the new job is often considerably less well paid than the one that has been lost.

A rather different approach is followed in the Nordic countries, as for example in Sweden. Traditionally, Sweden has tended to limit wage adjustments and widening the wage gap. But quantity adjustment is also limited and Sweden has been very much against measures such as early retirement and a reduction in working hours. So here, greater emphasis is placed on adjustment focusing on quality and training; as prices have little part to play, much use is made of collective bargaining and intensive use of employment policy measures, which are themselves

considerably developed. One typical feature in Sweden is the organisation of sector negotiations which, in the event of restructuring, means that it is possible to take into account and take care of workers in an insecure position. The latter do not fall under the responsibility of a single firm, but of the branch of activity as a whole and it is therefore this sector which must address the issue of their redeployment, with the help of the public authorities.

Three other countries illustrate a quantity-adjustment oriented approach. These are the “continental-model” countries of Germany, Belgium and France. None of these three countries, with their emphasis on the Bismarck tradition and security for workers in protected careers within large enterprises, want to go down the wage adjustment route, and action on training is geared primarily to ensuring workers are employed in stable environments. There is therefore a significant emphasis on volumes: these three countries have focused considerably on early retirement and reducing working hours, both options seen as a means of “purging” and regulating the labour market, to make it possible to recruit more unemployed workers and young people. Nevertheless, it is difficult to imagine that both management and the unions in the course of their negotiations will spontaneously agree on the right number of working hours or the right redeployment measures. So it is a supervised flexibility that takes a leading role, particularly in France. We should perhaps take a closer look at national differences. Belgium can be considered in the mid-ground here, while Germany makes much greater use of negotiated restructuring and adjustment through training (for example, its apprenticeship system), bringing it much closer to the Swedish approach. France tends to have a succession of insecure work contracts, with considerable erosion of the guarantees afforded by employment law, more along the lines of the United Kingdom, although without the emphasis on wage adjustment.

These brief descriptions are of course liable to vary over time. They do suggest, however, that the diversity of contexts can play a key role, not only in the nature of the transitions experienced by laid-off workers but also in the adoption or rejection of “good practices” such as the Austrian labour foundations. The latter emerged out of an instrumental environment very similar to that in Germany, with a strong tradition of social dialogue. They also presuppose the transferability of recognised vocational diplomas (once again the importance of apprenticeship). They are meaningful only in a market environment; they would be redundant in the Nordic countries and would have to overcome considerable barriers to mobility in the French and Belgian contexts.

What more general progress can be made amidst this variety of adjustment mechanisms?

### *3.2. New approaches to linking the global and local dimensions in Europe*

The above comments have been fairly global for each of the countries mentioned. We should now look at them again in the light of the priority of inclusion. As it has often been noted, the way that workers caught up in restructuring exercises are treated can vary considerably depending on whether they worked for a large company or not. On the one hand, we see a mechanism which is fairly similar from one country to another, and various relatively generous approaches, either in terms of redundancy pay or redeployment. On the other, more often than not, no specific measures are drawn up, and workers have to fall back on the very diverse national policies for the unemployed, in other words they are given the minimum assistance. This suggests two cross-sectoral priorities in the “transitional markets” approach. The first is for all the affected workers to be included in arrangements offering effective guarantees; the second is that there should be collective control of the linkages between (i) compensation and redeployment and (ii) effective job creation.

On the first point, it might be helpful to look again at the Swedish arrangements for looking after temporary workers or those on fixed-term contracts in the context of sectoral negotiations: this much broader approach shows that addressing the issue merely at company level is not enough, even in a country which has very active employment policies, and even with regard to workers in large companies. All the stakeholders concerned should be involved in the negotiation process(es): employees, employers and all the other players likely to be affected by restructuring (and therefore with an interest in taking action: municipalities, regions, networks of associations, etc.).

On the second point, the transitional markets model is directly applicable: one person’s mobility depends on everyone else’s, and it is necessary to address the career paths of the most vulnerable from the point of view of collective supervision of the range of employment opportunities or training places. This need is particularly apparent as regards training measures, which are often underrated or disappointing: the pessimism of workers (particularly the less skilled) vis-à-vis training is fuelled by a twofold fear. Fear of “going back to school” and once again risking failure, and fear of making this effort in vain. Clearly then, any proposed redeployment must be made in conjunction with training steps which must be sufficiently credible and reassuring so that the lower skilled workers will take the risk of committing themselves. More generally, however, redeployment moves do not take on the same meaning for someone in a thriving employment area and for someone in an area where employment has been hard hit. Credible redevelopment initiatives are also a key part of the process.

Two key priorities are the provision of credible options and reintegration of the players involved. The development of new transitional rights for workers will

vary according to national context. If, as in the UK model, a priority role is attached to price adjustment, then it is primarily in the field of training that collective funding and mobilisation procedures can be worked out. In contrast, and this is the situation in the majority of countries in Nordic and continental Europe, where it is policy not to approach market adjustment predominantly from a price perspective, the two priorities above presuppose much more ambitious negotiations on mobility and transitions. The main focus is therefore on the territorial level. In light of this, consideration needs to be given to a redistribution of responsibilities at both national and European level.

The focus needs to be placed on more comprehensive, unified negotiations at local/territorial level, on the joint mobility of the workers laid off, those remaining and a significant part of the rest of the population in the area concerned, seeking to identify plausible networks of transitions which workers can approach with confidence. This means putting forward a series of tenable temporary positions in the event of too great a disparity between job supply and demand, incorporating them into redevelopment processes. For example, workers could be allowed to remain working half time in their original company (with compensation being paid to the company for any additional expense), and the other half of the time could be spent in an association, partly funded by the latter and partly by the municipality. This means of preserving employability gives workers a degree of security while at the same time transferring their skills and diversifying their activities.

Running counter to current trends towards blocking early retirement, negotiations should not completely rule out measures of this type for older workers with less sought after skills. But this needs to be part of an overall package geared towards socially beneficial employment and activities, and in a context in which a real emphasis is placed on promoting retraining and/or mobility and the search for non-irreversible solutions.

Another approach could be to stabilise wages on a basis much larger than the company alone, by providing for career development within a network of companies; there should also be greater investment in training older workers (it is often the case that there is little training for employees aged 40 or over) and seniority should not be rewarded unless it is tied in with the acquisition of identified skills.

Whatever the national context, workers need to be better equipped, by objectivising their skills to make them more transferable (for example, efforts to validate experience acquisition) and by introducing collective evaluation processes and boosting employability in the firm. These medium-term prevention practices are illustrated by the example of the employability negotiations set up by the Netherlands Rail Company a few years ago (Gazier and Schmid, 2001). An agreement between management and unions led to an obligation to provide every employee every three years with a skills assessment carried out by an

independent firm agreed upon by both parties. If this assessment shows a shortfall in relation to what is required in other comparable companies (which could create difficulties for the worker in mobility terms) the company must arrange and pay for the relevant training and the worker must complete this training. This is a means of keeping a close watch on matters which does not prejudice the choice to leave or to lay off, but enables the players in question to manage the consequences of such a decision.

These steps have repercussions for the policies pursued in the European Union and the institutions framing and implementing them. On the one hand, a significant innovation in this field was discussed and then decided upon in 2005 and 2006, and this must be mentioned here. On the other, a wide debate began at the turn of the century on structural policies and the European Employment Strategy. All these policies have been assessed and reviewed, and this is not the place to consider them in detail. We shall merely look at a few of the key priorities.

First of all, we should welcome the culmination of the long and sometimes halting process which led the Commission to introduce in March 2006 a Globalisation Adjustment Fund, which has been allocated €500 million and is intended to compensate and redeploy the victims of relocations in certain precise cases (Ferenczi, 2006). Nonetheless, implementation remains somewhat restrained.<sup>2</sup> The Commission has confirmed (ibid.) that addressing the impact of relocations within the European Union member states is a matter exclusively for the countries concerned. There is no doubt that a historic opportunity is being missed here. Relocations within European countries are a direct result of the existence of the European Union, and they give an economic advantage to the companies that go down that route and to the regions to which they are relocated. It is therefore only logical to help the countries and workers who lose these “relocated” jobs, and Europe should clearly accept some responsibility. The redistribution between founding countries and European countries with low wages will not continue forever and will decrease as the latter catch up with the former:

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2. First of all the fund is relatively small compared with the amounts spent by the European Social Fund. Second, it is intended only for the victims of relocations outside the European Union, for example the workers in the textile sector who lose their job because of relocations to Morocco or India. Relocations within the European Union are not covered. Lastly, eligibility conditions are restrictive on three counts: in order to qualify for assistance, states must demonstrate the link between job losses and “significant structural changes in global trade patterns”; redundancies must be a result of unforeseeable shocks; and they must involve at least 1 000 employees. It is, therefore, very similar to the Trade Adjustment Act introduced by the US in the 1960s, then made more extensive and less rigid with the establishment of the NAFTA customs union (with Canada and Mexico). The TAA was discussed in Section 1 of this paper. In the Europe of 2007 there is the risk that it will be very difficult to prove entitlement because of the need to demonstrate that job losses have occurred as a result of unforeseeable developments in international trade.

this is the very essence of European integration and it should prompt the Union to attenuate the consequences, at least for the less well-equipped countries.

However, the role of this fund, even were it to be expanded and strengthened, will remain subsidiary. It cannot act alone. Its action will depend on the networks of opportunities established by countries and regions, with or without the support of the Union via funds such as the European Social Fund. To go back to structural policies and the European Employment Strategy, in both areas the key issue is now innovation and adaptation to change, which for us means greater emphasis on the rights to protected mobility which Europe must introduce and support. Here again, it must do so by promoting negotiations at regional level.

European efforts to afford better protection for and improve the mobility of workers are of long standing and have been made in a complex field in which conflict can easily arise. There has been a plethora of regulations to harmonise guarantees and allow for the equivalence of qualifications. The dilemma to be addressed is whether to simplify matters at the risk of retaining only minimum protection or to aim for the top at the risk of creating what the better protected countries might consider as unfair competition.<sup>3</sup> Similarly, questions are being asked about the "Structural Funds" and there is uncertainty about the best way ahead. They have had a very strong impact on countries such as Portugal and Greece, and regions such as the Mezzogiorno (European Commission, 2004), but their eligibility criteria and the projects they may co-finance are now too restrictive. European action for the regions in difficult situations will probably have to be revised. In the light of the current globalisation process, there needs to be a reassessment and updating of the collective national and local choices relating to the identification of local areas to be supported as part of a redevelopment process, and those which should be given financial transfers and aid for geographic mobility. In addition, the ongoing nature of change and the threat of restructuring should prompt greater attention to drawing up and implementing reliable means of anticipation and assistance. Links with the European Employment Strategy, revised to take account of the difficulties encountered by employment in Europe, need to be clarified and reinforced.

In this redefinition of social rights and protected mobility, and in the light of this inter-connection, the transitional markets approach does not mean seeking formal unification or the satisfaction of minimum standards. It is an ambitious federal view, seeking to bring about both social integration and growth, which is the logical ultimate prospect (Gazier and Lechevalier, 2006). This is much closer to the federalism of Canada than the version in the United States (the latter being too restrictive in the social field). In this federal framework, still to be built up, clearly regulations must continue to be drafted but they must be linked to

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3. As witnessed by the conflicts which have emerged since 2005 over the Bolkestein Directive.

other more tangible contributions and arrangements. The role of collective bargaining should become more important, which means greater involvement of the social partners at all levels. With reference to restructuring, clearly consultation with the unions must be envisaged whenever a decision concerns various countries in the Union; but European support at local and regional level is also necessary. It may come in a variety of forms and comprise, for example, aid from the structural funds tied in with negotiations involving all interested parties. There could also be large-scale support for cross-border regional co-operation in the field of redevelopment.

### **Conclusion**

This paper, it is to be hoped, has shown that above and beyond an example of “good practice”, now fairly recognised, there are more general elements and prospects in Europe which deserve to be explored in order to gain a better insight into the current arrangements surrounding large-scale job losses, to influence the way they are effected and to improve the way their consequences are managed. An increasing number of stakeholders in Europe now acknowledge that certain current policies have gone as far as they can go; various innovations and experimentations have emerged which need to be evaluated in a comparative way and trialled on a larger scale. The new workers’ rights await systematic recognition and implementation, and there is no doubt that this is a historic opportunity for Europe to give its support and a clear impetus.

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## **B – Family life**

### **I – Work flexibility and the reconciliation of family and working life. What is the role of flexicurity?**

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#### **Introduction**

The term “flexibility” is increasingly used to describe new forms of work organisation, employment contract and, to some extent also, social and labour market policy that shape the relationship between employer and employee. These very diverse practices have in common the fact that all imply a move away from the typical models of employment and work that were seen as characterising the post-war “thirty glorious years”: an open-ended contract of full-time employment, in the service of a single employer, characterised by a high degree of subordination within quite rigid forms of organisation and hierarchy (Vielle and Walthéry, 2003).

The impact of these various types of flexibility on work-life balance is not clear-cut; it can be positive but it may be negative. The nature of the impact will depend not only on the type of flexibility, but also on the security accompanying the flexibility and the resources that the person has for coping with the flexibility. In this context the gender aspect becomes vital in that expectations and cultural norms not only determine what types of flexibility are proposed/taken up by men and women, they also shape the various national institutional settings, and vice versa. Hence, the impact of work flexibility on work-life balance can be expected to affect men and women differently, not only because different types of flexibility are used to achieve different goals but also because the institutions responsible for putting new arrangements in place will be differently geared to providing support for flexibility, while society will punish and reward flexibility in line with social norms and hence the different expectations of men’s and women’s behaviour.

Despite this highly ambiguous state of affairs, in discussions about reconciling work and private life, flexibility is often put forward as the solution. In this context, flexibility is mainly taken to mean variable working hours and being able to take time off. However, the economic literature shows that while the amount of working time per worker may, in the short term, be decided by the worker (labour supply), in the long run it is determined by the employer (labour demand). Hence, individual decisions to work more/less, early/late, etc., ultimately depend less on workers’ wishes than on employers’ needs. Secondly, taking time off for private matters is interpreted as having priorities elsewhere

than in the workplace, which leads to penalties in terms of career development, access to lifelong learning and pay. Furthermore, it seems that men and highly skilled women are more penalised in this context than low-skilled women.

This paper will briefly discuss what types of flexibility are considered relevant to work-life balance/imbalance. It will go on to describe the differences in the types of flexibility used/imposed on men and women across skill levels and across countries. It will then draw conclusions as to the implications for individuals/families of these different types of flexibility and assess to what extent flexicurity may offer a solution to some of the dilemmas.

### **1. What flexibility to reconcile work-family balance?**

Discussion of how to combine work and family life, long on the agenda of feminist scholars, has in the past few years entered the mainstream research and policy agenda because of issues connected with the demographic challenge. The employment rate of women, and especially mothers, has greatly increased in most OECD countries over the past three decades. In addition, women have improved their educational attainment and raised their labour market ambitions accordingly. Their pay has increased and they aspire to fulfilling careers. In some OECD countries women are fully integrated into the labour market – albeit without equal opportunities – while in others they remain on the periphery of the labour market and are considered very much a reserve army. This trend towards a dual-earner family has increased the need to find ways of enabling families to combine work with household responsibilities. Discussion about who should reconcile work and family has also shifted from an exclusive focus on women to including men as main actors. Despite this move, women remain the key group in discussion about reconciliation, especially in the light of demographic change: not only do they constitute an underutilised pool of labour for meeting the labour shortage, they are also the main partners in providing the future workforce; thirdly, they are the key suppliers of both formal and informal care of children and the elderly; and fourthly, being in the majority in the older population as a result of their longer life expectancy, they are more reliant on welfare provision in the long run. The main problems facing families – and women in particular – relate to what may be labelled the “triple bind”: the demand for an increase – and a continuing increase – in their labour market participation and flexibility; the implicit expectation that they should give birth to more children; and, thirdly, the growing demand, at a later stage in their lives, that they provide care for both their grandchildren and their own parents. It is important to note that statistics reveal a positive correlation, at macro level, between fertility and female employment rates. High-fertility countries also have high employment rates for women. Gainful employment has become the norm for women, and the choice whether to have children or not has come to depend on whether or not it appears feasible to combine work and children. In other words, the choice for women today is whether or not to have children as well as a job. And although, across Europe, married women especially have increased their labour supply over the past thirty years, countries have not all developed

measures to the same degree for helping people combine work and family responsibilities. In connection with the concept of balancing work and family, flexibility – especially flexible working time (for example, part-time work or flexitime) – is often put forward as the key factor alongside provision of childcare. While various measures of this kind have been implemented in most European countries, the ways in which they have been implemented and the outcomes produced vary considerably from one country to the next. Yet it is recognised that, in order to reconcile work and family, more flexibility is needed; and flexibility is here understood to mean being able to deviate from the traditional male-breadwinner model of a full-time job over the entire active age span.

The notion of flexibility encompasses a huge and highly diversified range of discourses and practices such as workers' participation, annualisation of working time, performance-related pay, fixed-term and part-time contracts, and temporary agency work. Numerous typologies have been drawn up that reflect the different approaches to flexibility, according to whether the focus is on the resulting working conditions, the strategies adopted by companies or the characteristics of the employment contract (see Jepsen and Watt, 2004). Although most of the concepts in some way affect the ability to reconcile work and family life, this paper will focus on flexible arrangements that obviously and directly accommodate or hinder the reconciliation of work and family life. They can be grouped into the following categories:

- external-numerical flexibility: fixed-term contracts and temporary work;
- internal flexibility: variations in working hours, part-time work, atypical working hours, hours determined at short notice, leave schemes, sick-relative days and working-time account schemes.

These categories are not mutually exclusive and various forms of flexibility may coexist and overlap (for example, a part-time employee may be on a temporary contract). When examining flexibility in the light of work-life balance it is useful to view the issues in terms of the following three groupings (adapted from European Foundation, 2005):

- positive flexibility;
- negative flexibility;
- predictability/stability.

Positive flexibility means being able to use flexible working arrangements for one's own needs (for example, having some degree of choice as to hours of arrival at and departure from work). Negative flexibility refers to situations where the flexibility is dictated by exogenous sources (for example, overtime, unforeseen changes in schedule or sudden termination of contract). Predictability may involve a degree of inflexibility – for example, having no say in time of arrival at work or being unable to take leave when desired; on the other hand, it also implies that there will be no sudden changes in the work schedule and therefore no need, for example, to reorganise childcare arrangements at short notice.

Probably the most-cited arrangements for reconciling work and family are part-time work and parental leave. These have been extensively researched and have also been negotiated by the social partners at the European level, resulting in the adoption of a directive. However, much research shows that both have adverse effects on career, though the severity of the penalties varies from one European country to another.

Much less is said and written about the possibility of reconciling work and family life in a context of full-time employment (European Foundation, 2005). Full-time employment, however, is the commonest type of employment in Europe and currently also the only type of employment which enables individuals to have a career. The challenge of combining flexibility with work-family balance thus entails ensuring not only that individuals are entitled and able to work part-time and take parental leave but also, very importantly, that those working full-time are able to continue to do so. Adopting this stance also gives more people the benefit of arrangements: many lone parents would fall below the poverty line if they only worked part-time or if they left the labour market for extended periods. In addition, it is an approach that widens the analysis to consider what part men (who work full-time and are not expected to work part-time on a large scale in the near future) can play in reconciliation.

The other side of the coin is all the flexible measures that hamper reconciliation of work and family life, such as unsocial working hours, overtime and work schedules that are liable to change at short notice. Temporary employment can be classified as belonging to negative flexibility in the sense that a large percentage of the workforce on temporary contracts are in that situation because they were unable to find employment on open-ended contracts. In some cases the situation may be predictable in that the employee knows when the employment relationship expires, but it can also be unpredictable as this type of employment includes temporary agency workers. This negative flexibility affects both those working part-time and those in full-time work and may be a particular problem for single parents, who cannot transfer part of their care responsibilities to a household partner but must seek support from neighbours, friends or other family, which can be very difficult at short notice.

Stability-predictability stands in contrast to such arrangements. Although it does not allow any flexibility, it facilitates planning and to that extent can help balance work and family life.

## **2. What flexibility and for whom?**

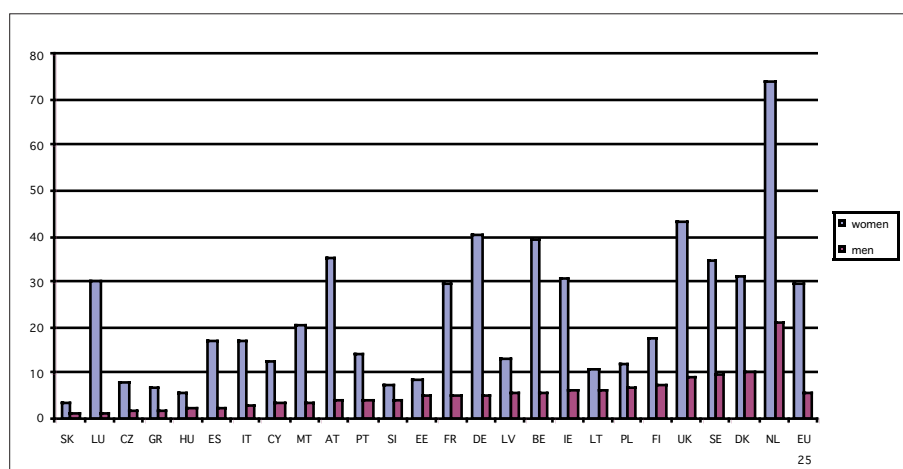
Using the above classification this section will briefly outline the extent of the use of the different types of flexibility, differentiating between gender and skill levels.

Part-time work is probably one of the best researched flexible types of employment. Around 30% of women in the EU-25 work part-time. However the

percentage differs widely across Europe, between a maximum of 75% in the Netherlands and less than 5% in Slovakia.<sup>1</sup>

Not all women working part-time do so in order to care for children, but the European Social Survey (ESS) gives us some idea of the proportion of women who work part-time instead of full-time for that reason. The second round of the ESS (ESS2) asked extensive questions about the work-life balance of individuals in 17 EU countries. Unfortunately – a reflection of social norms as to who does what – only women with children were asked whether they had worked part-time to care for children and for how long. The figures seem to indicate a fairly clear divide between women who never work part-time to care for children and others who work part-time for very long periods to look after children. The proportion of women taking part-time employment to care for children in each of the countries follows the general structure of part-time employment (for example, half the women in Sweden work part-time to care for children). The main message is that women who work part-time to care for children rarely do so for only a few years; in most cases they adopt that pattern over a very long period. The data do not indicate any differences between skill groups regarding the pattern of part-time work: in some countries a larger proportion of higher-skilled than low-skilled women work part-time to care for children (for example, Greece and Sweden), whereas in others the opposite applies (Norway and Portugal).

**Figure 1 – Part-time employment in the EU in 2003, by gender**



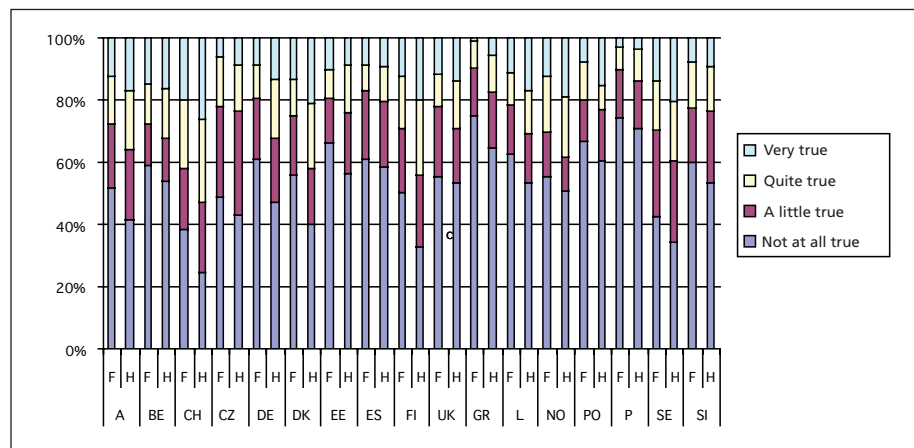
Source: Eurostat.

Another type of flexibility is being allowed to choose one's times of arrival at and departure from work. To a certain extent this type of flexibility can remove the need to work part-time. The figures show us that degree of choice in this varies greatly across European countries but that in all countries a larger proportion of

1. The reasons for this great variety are beyond the scope of this paper, but see Jepsen (2005) and Buddelmeyer et al. (2004).

men than of women have some such freedom. In Denmark and Finland this difference is more than 15 percentage points, while in Spain and the UK it is a mere 3 percentage points. This type of flexibility is most widespread in the Nordic countries, for men, and in Switzerland.

**Figure 2 – Percentage of workers who decide their own start and finish times at work, 2004**



Source: ESS2 (2004/5).

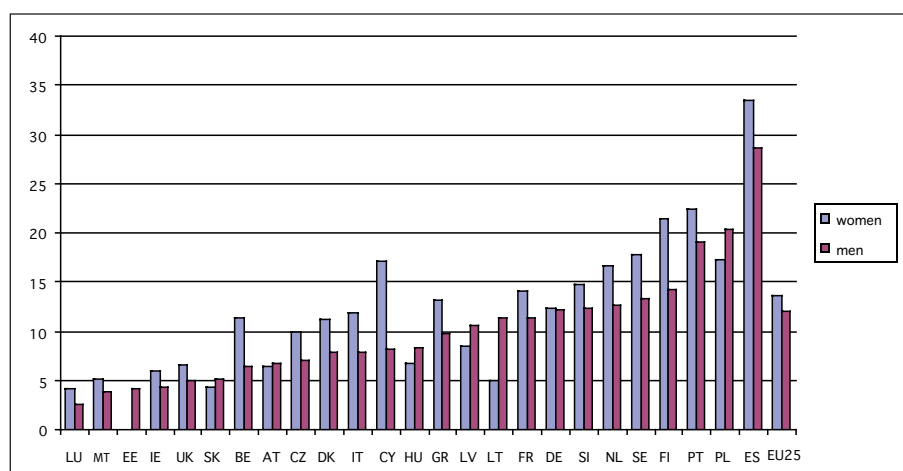
In addition, flexibility of starting and finishing times increases with educational attainment. Hence being a man with a tertiary education gives you a higher probability of enjoying this type of positive flexibility than being a woman with primary-level education.

Career breaks are put forward as yet another way of reconciling family life and work. European figures clearly indicate that this type of flexibility is reserved for women, with very few men taking the opportunity and, insofar as they do, for only a short period of time (days rather than months). The ESS2 asked women with children whether they had taken a career break to care for children and for how long. Not only do the figures reveal considerable differences between countries with regard to taking a break and the length of the break, they also demonstrate large intra-country differences according to skill levels. In general, two opposite forms of behaviour can be observed: the highly skilled are likelier to take a career break for childcare purposes than the low-skilled; once the career break is taken, however, the low-skilled tend to remain out of the labour market for longer and this difference is much more marked than the difference between taking and not taking a career break. If the low-skilled can afford to take a career break then the period tends to be longer than for the highly skilled.

Turning now to “negative” flexibility, the first aspect is the importance of temporary employment. The figures clearly display the over-representation of

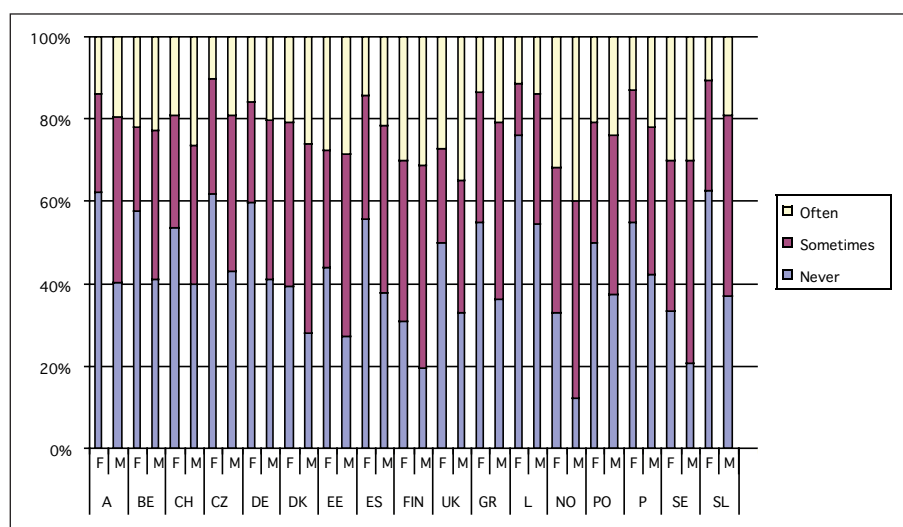
women in this group. As discussed above, temporary employment is perceived as negative flexibility to the extent that it does not provide the types of security which prevail in society at large; it increases instability and inability to plan and, even more importantly, it decreases the bargaining power of the individual and hence the ability to seek an agreement with the employer on specific measures to reconcile work and family.

**Figure 3 – Temporary employment in the EU in 2003, by gender**



Source: Eurostat.

**Figure 4 – Percentage working evening/nights by gender**

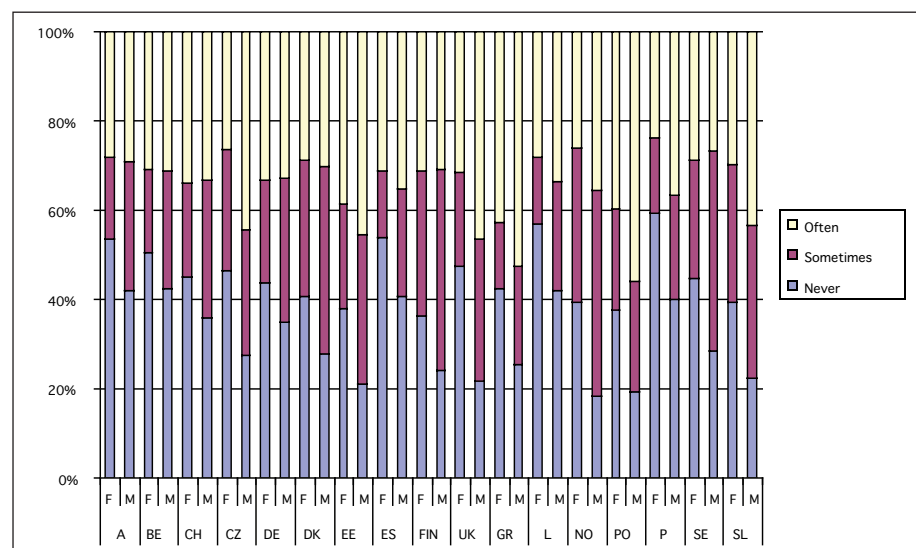


Source: ESS2 (2004/5).

With regard to working unsocial hours in the form of night and evening work – a type of flexibility that can be seen as encroaching on family life – there are distinctly different patterns among men and among women. We observe the same trend across all countries with far more women than men never working evenings or nights, and the opposite finding in relation to working evening and nights sometimes. However, the difference is much smaller when it comes to often working evenings/nights; here more men than women are affected, but the difference is less marked.

Weekend work, another form of flexibility which can be classified as having a negative impact on reconciling work and family life, is more widespread than commonly thought. More women than men never work weekends and more men than women sometimes work weekends; however, when it comes to often working weekends the picture is less clear cut. On average, 34% of workers often work weekends in the countries in question, and here the difference between men and women varies from country to country; especially in countries with a high level of public service, more women than men often work weekends. In contrast, in countries with a large agricultural sector, more men than women work weekends.

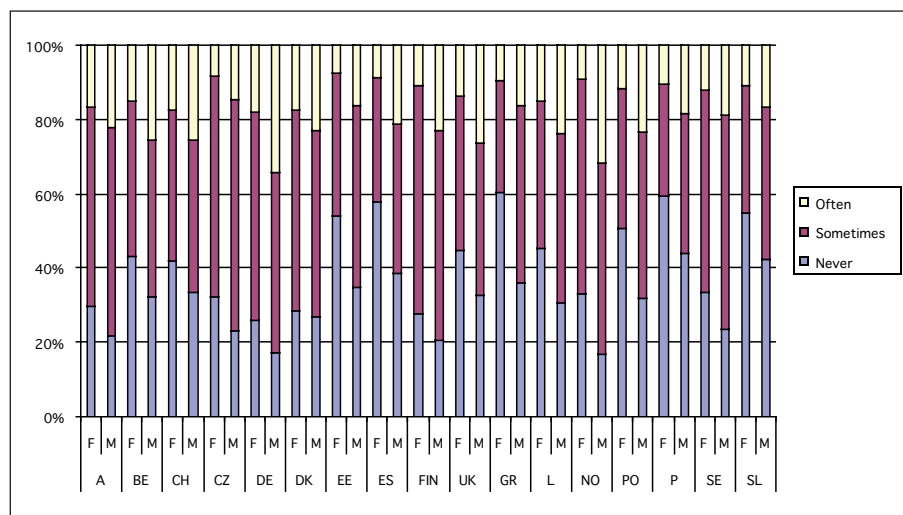
**Figure 5 – Percentage working weekend by gender**



Source: ESS2 (2004/5).

With regard to performing overtime at short notice, the gender divide is also quite clear: more women than men never do this, while more men than women often do it. With regard to sometimes performing overtime at short notice, the evidence is less clear-cut.

**Figure 6 – Percentage performing overtime at short notice by gender**



Source: ESS2 (2004/5).

Overall, therefore, not only are women performing flexible types of work far more than men, but the types of flexibility differ between men and women. The observable pattern is that women either are not involved in weekend work at all or their work requires them to work weekends often. They do to some extent work evenings and nights, and they form the large majority of individuals working part-time, taking career breaks and having temporary employment contracts. Men also have their fair share of temporary employment contracts, they also work nights and weekends, and they do more overtime at short notice than women. However, they do not work part-time the same way as women. This picture confirms that the types of flexibility affecting men and women are, to some extent, different and partly reflect the social perception that it is for the woman to reconcile work and family. This, however, does not take into account the large percentage of women who work weekends and evenings.

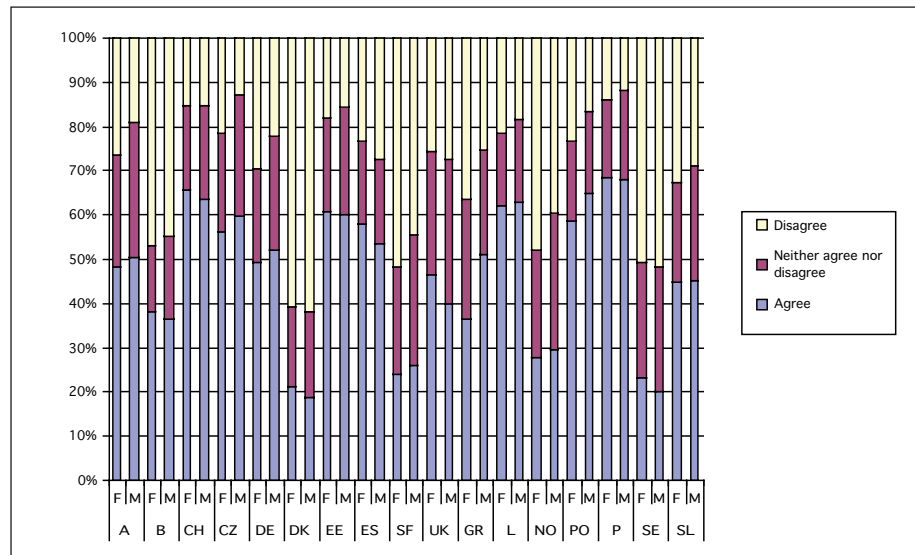
So what are the implications? It depends on the institutional settings as well as the social norms. Seen in terms of reconciliation of work and family, the form of flexibility sought will also very much depend on what individuals think are the institutions/facilities they need to achieve a work-life balance (Hantrais and Ackers, 2005). One way of looking at this is to ask people to what extent they perceive reconciliation of work and family as important when choosing a job, what is their perception of sharing of household tasks, and how women should carry out this reconciliation.

In the ESS2, it becomes quite clear that that when choosing a job, a majority (80-90%) of both men and women find it important or very important to be able to reconcile their work with family life. Furthermore, 80-90% of both men and

women state that men should take as much responsibility as women for home and children. Hence, at first glance there does not seem to be a significant difference in the way men and women respond to the challenge of reconciling work and family life. And yet it is quite evident in terms of labour market outcomes that there is a significant difference in what men and women believe to be required to reconcile work and family life – women work part-time, while men do overtime. Furthermore, there are social expectations as to how this reconciliation should be carried out.

When people are asked whether women should reduce their working hours to care for family a clear divide emerges between the Nordic countries and Belgium, one side, and the remaining European countries. In the Nordic countries and Belgium around half of respondents disagree with the statement that women should reduce their hours to care for family, as opposed to Portugal where only about 10% disagree. On average, the answers given by men and women in each country do not seem to be significantly different, although there are slightly more women than men who disagree with the statement. This clearly indicates that there are differences in what is perceived as being the key to reconciling work and family life. It is a result not just of different availability of other types of flexibility (for example, flexitime or opportunities for career breaks) but also of how the working day is organised in general (for example, the culture of long work hours in the UK and Spain). Even more importantly, it is probably the outcome of social norms regarding who cares for the children.

**Figure 7 – Percentage of women and men who agree, neither agree nor disagree or disagree that women should reduce working hours to care for family**



Source: ESS2 (2004/5).

This overview displays the complexity of the issue. Firstly a large percentage of the workforce in Europe is affected by flexible work, with differences not only between countries but also between gender and skill levels.

### **3. What are the implications and how does this link up with flexicurity?**

The implications of the different types of flexibility that are promoted for reconciling work and family life will depend on the accompanying safeguards and the way flexibility is perceived in the economy. To understand how flexibility is used for purposes of reconciliation, it is necessary to understand how women have entered the labour market. This entry has taken place predominantly via part-time or short-term employment, women's jobs being often more precarious than those taken by men, and this is a situation from which they find it very hard to escape. In general, women simply find themselves in more flexible jobs. This means that more women now have jobs, but they are not necessarily better jobs in terms of security and pay levels. One example is the Netherlands, where women, throughout the 1990s, entered the labour market via secure, but short part-time employment. As a result, though the goal of increased female labour market participation was achieved, the flexicurity strategy was far from bringing equal opportunities since part-time employment, although secure and giving rights, did nothing to spread the unpaid care burden; it merely made it easier to combine work and care, leaving women still financially dependent. In Spain, the story is quite different. Here, in the 1990s, women entered the labour market via full-time employment, but on a short-term basis. In Spain women suffer a disproportionate lack of employment security, the security having been given to one group of people and the flexibility to another. In general, when jobs have been described as better for women, what has been meant is better in terms of enabling women (but women alone) to reconcile work and family. In Lewis (2003) it is stated that flexicurity remains a distant goal for women, the main reasons for this being the low regard in which care work is held and, especially, the way the care burden is divided not only between women and men but also between collective care provision and the individual. The emphasis has been on care provision and cash transfers (parental leave), and little attention has been paid to gender equality in respect of unpaid work at the household level. This is an important factor in discussion of the link between flexibility and work-family balance because, in the context of policy/strategy, the distribution of care work at home leaves women and men with different starting points and hence with unequal bargaining power.

In general women are under more pressure to perform informal care than are men; they are more likely not to be in full-time employment and also more likely to need career breaks and childcare leave. However, these needs are socially embedded, and the choice between caring plus working and either caring or working is not a real one. What is more, caring can bring rewards in emotional

terms and satisfying relationships that may be preferable to low paid, low-status, insecure jobs.

Most European Union member countries have reacted to women's need to combine work and care and the resulting strategies are influenced by the differing roles attributed by each culture to women within the family and on the labour market. In Crompton and Le Feuvre (2000) the gender division of labour is theorised along a continuum and this provides a framework for analysing different policy options.

**Table 1 – Gendered division of labour**

| Traditional gender division of labour |                                       | Less traditional gender division of labour            |                            |
|---------------------------------------|---------------------------------------|-------------------------------------------------------|----------------------------|
| Male breadwinner/<br>female carer     | Dual earner/female<br>part-time carer | Dual earner/<br>substitute carer<br>(state or market) | Dual earner/<br>dual carer |

Source: Crompton and Le Feuvre (2000).

The model in the leftmost box applies to countries like Spain and Italy where the majority of mothers are not on the labour market. This was the dominant pattern in Europe until the 1960s. The second box shows the gender roles found in Austria, Germany and the Netherlands. The third box from the left illustrates the gender pattern found in the Nordic countries and the US. The rightmost box shows a pattern not currently found in any European Union country, although, as we will discuss below, some attempts in this direction have been made in, particularly, Sweden (parental leave) and the Netherlands (1.5 jobs per household).

The construction of work as part-time or full-time is not something natural, but rather a social construct closely related to gender (hospital doctors work full-time, many nurses work part-time). Overtime at short notice is also expected to be more accepted by men than by women. Basically, women's participation in the labour market reflects their role in the household; they take up jobs that enable them to combine paid and unpaid work (Gustafson, Kenjoh and Wetzels, 2003). The paid work is to a certain extent seen as an addition to the unpaid work and as a supplement to the household income (Lewis, 2003, and Kurian, 1999), although the extent to which female paid work is regarded in this way varies across the EU member states, as can be seen from Table 1. Flexible forms of work, even where they are secure, may ensure that women can continue to provide unpaid care work and may, in this very way, constitute a barrier to equal opportunities. A further point is that to define women solely as second-earners is inaccurate: a large proportion of the female workforce are sole earners, and

this leads to situations in which the introduction of part-time work creates a whole group of working poor, as in France, or excludes and creates unemployment/inactivity traps for sole parents, as in most European countries.

To make it easier to combine paid and unpaid work various strategies are used in the EU member states (see *Transfer*, No. 1, 2004 on this issue). In the Scandinavian countries a combination of generous leave schemes and childcare facilities enables full-time labour market participation by mothers; but little flexibility is provided in the form of flexitime. In France and Belgium a combination of publicly provided childcare and part-time work has contributed to the rise in female participation rates. Interestingly, part-time work is decreasing in France and the Scandinavian countries as women turn away from less qualified part-time jobs to take up and remain in full-time jobs with career opportunities. In Germany, some women stay out of the labour market for long periods to bring up their children, although this pattern is changing. East German mothers in particular tend to return to the labour market, if they can, at the latest one year after giving birth. Under the recent Hartz reform mini- and midi-jobs (very small and small part-time jobs) have received increased support as a way of persuading German mothers to enter the labour market. These jobs do not give full social security rights as it is assumed that women taking them up will have social security rights through their husbands. In southern Europe relatively few women are in the labour market and fewer children are being born, indicating that radical choices as to motherhood are being made based on whether the woman enters the labour market or not. The long-hours culture and difficulty or impossibility of deviating from the standard male breadwinner model reinforce this situation. Although our focus here is on childcare, in the future care for the elderly will have to be taken into consideration to the same extent as childcare.

In the Netherlands and the UK part-time work is a means of combining childcare and paid employment. In the Netherlands, as opposed to the UK, part-time work can be found at all levels of qualification and occupation. In the Netherlands no wage penalty for part-time status is found, although wages, and therefore future wage progression, are affected by limited career options. However, the impact of the introduction of the Dutch version of flexicurity on women is rather ambiguous. The paradigm shift that took place was accompanied by a large-scale entry of women into paid work. However, the work in question is part-time and the absence of childcare prevents women having a fully free choice. Although part-time work is well protected by legislation and no apparent wage penalty can be observed, there still remains the question of financial independence. Very few women working part-time are able to get by on their own wage and so they remain financially dependent on their partners. This assumption of the financial reliance of the wife on the husband continues to be reflected in taxation and social security systems. Men who work part-time (17%, the highest rate in Europe) are either students or men at the end of their career, aged 55 or more, and hence not providing for a family (Knijn, 2001). Thus flexicurity has enhanced equal opportunities in the Netherlands only to a limited extent, as the

traditional, albeit modernised, gender pattern persists, and part-time employment will not substantially modify the gender contract.

The Danish version of flexicurity would seem to be more coherent with regard to equal opportunities as it appears to apply equally to men and women. However, increasing maternity leave to twelve months without making part of it compulsory for men has adversely affected those women who want a professional career, as the cost to the employer during maternity leave appears to have curtailed employment opportunities for women (IDA, 2004). This has recently led the Danish social partners to agree on setting up a common fund to compensate employers for the financial loss incurred during their employees' maternity leave. The contribution paid to the fund is irrespective of the number of women working in the firm or sector, and is a cross-sector solidarity measure to "finance the future workers". Equal opportunities are, however, better promoted by the Swedish version of the maternity-parental leave scheme, which is more flexible and includes a compulsory leave period for the fathers (Pylkkänen and Smith, 2004). Other elements of flexicurity affect men and women differently in both Sweden and Denmark but will not be dealt with in this article.

The transitional labour market concept provides a good model of how to establish better bridges between the various labour market situations; however, women are still being penalised by their absence from the labour market and by their periods of reduced working time. Currently, transitions do not pay, and research consistently shows that taking breaks from the labour market to bring up children has a significant negative effect on wages and that each additional year off work adds to the negative effect (Wetzels and Tijdens, 2002, and Belbo and Wolf, 2002). There seems to be less of a negative effect with regard to periods of part-time work (Klammer and Tillmann, 2002). This is notwithstanding the fact that part-time jobs are not found in all sectors. In countries like France, Germany and the UK they are confined to lower-range jobs and a large wage penalty is found. Part-time jobs are not homogeneous and should be distinguished according to whether they are integrative, maintenance or exclusionary labour market transitions. In Anxo and O'Reilly (2002), the authors identify the individuals that belong to these three groups. Individuals that are part of the integrative transitions are dependants or second earners, who access the labour market while they have caring responsibilities or are still in education. They rarely move on to full-time employment and are more likely to leave the labour market. Part-time work as a maintenance strategy is rarely found except among the young and highly qualified, who move on to full-time employment. The exclusionary transitions are mostly found among the lower-skilled. However, there are important gender differences. Men seem to spend shorter periods in part-time employment before moving on to something better, while women make more transitions, stay longer in part-time employment, and finally tend to drop out altogether. Here again, important country differences exist. Sweden seems to be better at promoting integrative/maintenance transitions due to its generous leave schemes and the right to a six-hour week for workers with small

children, while in the Netherlands, despite the security, such workers drop out. However, these policies have also contributed to the fact that Sweden has the most gender-segregated labour market in Europe.

In the UK, despite the framework of social rights that has been built up since the 1970s to protect non-standard workers to a certain extent, women remain in a precarious situation on the labour market, finding themselves all too often beyond the bounds of legislation (Fredman, 2004). The main reason for this chronic precariousness, despite the introduction of some security, is the absence of guarantees that individuals who navigate between paid and unpaid work can do so without incurring too high a cost. This situation is compounded by the long-hours culture in the UK and the lack of affordable childcare, which leaves women, especially low-income earners, with no choice but to reduce their working hours, or leave the labour market altogether in the case of middle-income women. Fredman concludes that it is only when the losses that result from transiting between paid and unpaid work can be eliminated that men will start taking their share of the responsibility for unpaid work. She also concludes that this is a long way off.

As things stand today, therefore, non-standard work such as short-term contracts or part-time employment is becoming more secure; however, this does not imply that equal opportunities are improving. It has merely allowed women in some countries to enter the labour market on unequal terms.

#### **4. How can flexicurity contribute to reconciling flexibility and work-life balance?**

Jepsen (2005) examines the gender aspect of flexicurity in detail. It stresses that although flexicurity can bring security to forms of flexible employment, it is by no means obvious that it will help to achieve gender equality. It is necessary to deal with several issues that are controversial and require profound changes in the welfare state (for example, individualisation of social and fiscal rights, since individual rights to social security must go hand in hand with individual choice in the labour market – see Esping-Andersen et al., 2002, Klammer, 2000, Jepsen et al., 1997, and Schmid, 2001). This is particularly important to developing the concept of flexicurity in the context of the transitional labour market and entitlements for coping with labour market transitions of various types. However, in order to manage transitions in and out of the labour market, it is not enough to have an inclusive and individualised social security system. Equally important are the mechanisms – and these are gender-neutral – with regard to the take-up rate of unpaid work (see Schmid, 2001).

Sweden is put forward as a good-practice model that meets women's needs; however, the steps taken are far from sufficient. Several points still remain to be dealt with. Not only are women the main providers of unpaid care work, in looking after both children and the elderly, but they are also more involved in part-

time work and temporary employment than men. What is interesting is that, in the paid care-work segment of the labour market, we also observe a majority of women and large proportions of part-time and temporary contracts. Furthermore, the wages in these sectors are quite low.

Within the flexicurity paradigm, women will continue to take career breaks and reduce their working time in order to provide care (see below), and this will segment them even more on the labour market; and it is not quite clear what the role is for men. Although flexicurity will bring with it some additional security, this will not necessarily create equal opportunities in the labour market for women and in the private sphere for men. Hence whether flexicurity is a hell or a heaven for women and families all depends on the policy mix that emerges out of the various strategies. However, the tendency in policy discussions to marginalise the work performed as unpaid labour goes beyond neglecting to take this sector into account in terms of its role and contribution to society (Lewis, 2003). It means that more work can be transferred to this segment without increasing costs and this fits neatly with the cost-containment strategies that are currently being used in most EU member states (Pierson, 2001). The question is whether the whole discourse on reconciliation of work and family life is not simply legitimising flexibility and leaving it to the individual to solve the problem. It is vital that flexicurity strategies address the question of the division of paid and unpaid work between men and women. This should include a generous replacement rate for the various care-leave schemes as well as reserving a part of the parental leave scheme for fathers, while at the same time introducing reduced working hours and doing away with the long-hours work culture. Only if it becomes possible for men to share in unpaid work can women really have a genuinely free choice with regard to paid work.

**Table 2 – The contribution of flexicurity to reconciling work and family life**

| <b>Flexicurity can contribute</b>                                                                                                                                                                                                                             | <b>What remains</b>                                                                                                                                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Make social security systems more encompassing<br>Paid leave with a high replacement rate<br>Right to decrease/increase working time<br>Childcare provision<br>(Re-)training<br>Anti-discrimination legislation<br>Right to return to job<br>Fertility rates? | Financial independence<br>A career<br>Availability of good reduced-working-time jobs<br>Gender-segregated labour market<br>Reinforcement of real choice between care and work for both men and women<br>Benefit levels as social security is becoming more individualised<br>Fertility rates? |

Source: Jepsen, 2005.

Hence, flexicurity can improve the situation of women as fixed-term contracts and part-time work become more secure; it can give momentum to extending and reinforcing rights to paid leave and lifelong learning, and also create an incentive to make transitions between different working-time regimes or between paid and unpaid work smoother and less costly to the individual concerned. However, whether it will have a positive impact on equal opportunities is doubtful. The flexicurity approach does not deal with the problem of financial dependence that results from working few hours a week or a year or with the related problems that occur in the social protection system, where benefits are becoming increasingly individualised. Nor does it deal with the persistent problem of gender-segregated labour markets, while it tends to reinforce current gender roles rather than put forward new ones. Women and men enter the labour market on unequal terms due to unequally divided burden of providing unpaid care. And no matter how secure non-standard work may be or may become, that will not change the distribution of unpaid work, so the problem of reconciling work and family will continue to be women's. A new approach is needed that makes sure that the new rights introduced when rebalancing flexibility and security on the labour market redistribute the responsibilities of unpaid care work between men and women. This includes positive incentives for men to provide unpaid care as well as the provision of quality employment and transitions for both men and women. How can we create an environment which provides genuine as opposed to forced choices (for example, part-time work may be the only "choice" in long working hours culture)? This question goes far beyond the question of what flexicurity can achieve to reconcile family and work.

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## **PART III – THE METHODOLOGY FOR RECONCILIATION**

### **A – The “partnership option” – The necessity for shared responsibility among the actors**

#### **Politics facing the market – Regulating labour flexibility in a society of individuals**

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##### **Introduction**

A few years ago, in a dialogue with Cornelius Castoriadis, Octavio Paz wrote, “Democracy is based on a plurality of opinions, which, in turn, depends on a plurality of values. Advertising and the market destroy this plurality by reducing all values to price. To my mind, it is this that encapsulates the complacent nihilism of modern society, which is different from the tragic nihilism of Dostoevsky or Nietzsche.” He goes on to add, “The market replaces the plurality of values with a single value, based not on a metahistorical or ethical concept, but on utility. This is a stage in the decline of the West that goes hand in hand with the development of science and technology. ... Modern society has changed citizens into consumers.” (Paz, in Castoriadis, 2004, p. 50.)

The poet’s trenchant comments strike a chord with all those who are concerned to reconcile economic growth with socially responsible development. And yet this interpretation of the present-day crisis strikes us as having two major limitations: it relegates the complexity of the real world to the confines of a very linear interpretation of history, and provides a truncated view of the relationship between the economy and culture or the individual. The spread of the market to all spheres of life is threatening the democratic underpinnings of our societies. Behind the veil of selfish calculation, this development is based on a belief in a “natural society” that is the opposite of the modern vision of an “autonomous society”, one that has to reflect on the meaning of its history and its finitude.<sup>1</sup> And yet, in identifying the market with an impersonal, propagative force, it is

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1. Borrowing the term used by K. Polanyi, J.-L. Laville shows that the Utopian ideal of a “self-regulating market” is primarily an instrument for stripping politics of its legitimacy (Laville, 2005).

not possible to understand the very close link it has with each and every one of us. For want of new political horizons, unilateral condemnation of the market has the effect of inhibiting analysis of its inherent advantages and dangers. Yet the distinctive feature of ethical political analysis, particularly when applied to economic and social matters, is not that it denies complexity but that it shows how much easier it is, if complexity is taken into account, to obtain a proper grasp of the true challenges of government action, in terms of both objectives and methods.

Leaving aside its technical uses – which we shall not go into here – the somewhat vague term “flexibility” encapsulates a new development: an ambiguous market to which there is apparently no alternative. But it is also a powerful indicator of the cultural changes at work in what are increasingly individualistic societies, which have cast off traditional political practices, be they bureaucratic or regulatory, and are affirming in no uncertain terms the crucial importance now afforded to the existence of a plurality of increasingly individualistic lifestyles. Of course it is not the only one.<sup>2</sup> Like teleworking, however, which reflects a change in the spatial and temporal bearings of work, the generic term “flexibility” reflects not only the extent to which culture is part of the economy, the increasingly hazy boundaries between work and private life and the emergence of new opportunities, but also the decline in the various forms of protection, the emergence of new forms of supervision and the rifts that go hand in hand with the myth that behaviour and identities are eternally malleable. Accordingly, the term brings us to the crux of the matter, which is whether or not we are capable of forging a common destiny: a destiny that needs to be invented in societies made up of individuals, societies which have thrown the traditional form of politics based on the state into disarray without coming up with anything to replace it. Yet this is a crucial issue: political togetherness was, from the outset, the very basis of democracy.

To try to unweave the tangled web of the relationship between the market and democracy by seeking to obtain a better grasp of the relationship between flexibility and social insecurity, we shall pursue two key ideas:

- We believe that the 1980s, when the term “flexibility” really took off in the United States, as in Europe, were not just a period when established social rights were deregulated. They also saw a change in the relationship between the market – or, to be more accurate, businesses, which are seen here as the linchpin of the market system – and the cultural context. Whereas in the preceding period companies were assigned a utilitarian production role in a context in which the need for infrastructure seemed

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2. The unprecedented development of a service relationship (Laville, 2005) is probably the other facet of the changes we are experiencing, against the backdrop of a global economy and a crisis in the traditional form of politics based on the state, but also of naked consumerism and a tendency for people to withdraw into their own private existences.

unlimited, and at the same time the state was held responsible for remedying inequalities by means of a policy of universal, anonymous redistribution, companies gradually emerged as a major venue for socialisation, a place where social identities were made and unmade (Sainsaulieu, 1992). In tune with the cultural context, they had to seek legitimacy in the prevailing cultural trends which, since the fall of the Berlin Wall and the collapse of the Soviet "model", had seen the modern individual only in terms of the apparent triumph of individual freedom and a rejection of any form of lasting reciprocity. But these approaches, in turn, provide only a limited and biased vision of the cultural potential of our societies. As is shown by the example of teleworking, workers' demand for greater independence would seem, at first sight, to be in keeping with the streamlining intentions of the business world. In practice, however, there are obstacles that shift the constraints without really alleviating them. And the prospect of a worker cut off from any sense of belonging to a working community seems just as unacceptable as that of a company's losing all control over the activities of its employees. So the question is not just to ensure that, whether they like it or not, companies work to integrate the prevailing values in order to justify their streamlining practices, but rather to determine what values we want to see debated and recognised today, in both working life and private life.

- So it is indeed a question of politics or, to be more precise, of political practice. In our present-day societies, which are societies made up of individuals and have cast off the traditional models of government, the forms politics takes and the places where it operates are changing. The idea that politics is constantly "outside" – or "above" – society has become increasingly less acceptable, for reasons which we shall have occasion to analyse. In particular, in addressing the need to regulate flexibility, it is necessary to take account of this new osmosis between the business world and its cultural context. To deny this permeability is to run the risk of allowing government action to become bogged down in bureaucracy, with the result that the violence of the market would merely be compounded by the violence inherent in bureaucratic systems (Habermas, 1987). But to acknowledge it does not mean that the values of today's individualism are the only valid ones. On the contrary, regulating flexibility presupposes that thought is given, at the same time, to changing the core cultural values that necessitate its development, even in its most regressive forms. Three options are proposed, each designed to reconcile flexibility and security in a society that bears the imprint of the diversification and individualisation of lifestyles. The general idea is to change from a strategy of bureaucratic constraints, based on the regulation of production, to a strategy rooted in the culture of the times, showing how the market should begin by submitting to a different scale of values from the one to which it spontaneously adheres, and then be matched by a political strategy of assigning

civil society and the various parties concerned by flexible working (trade unions, but also associations of unemployed people and those in precarious employment, consumer associations, local and regional politicians, associations representing families, etc.) a key role in the establishment of a new political set-up. It is not impossible that the debate on the regulation of flexibility will raise the broader issue of democratic control of the market in societies made up of individuals, who are no longer prepared to see financial inequalities offset by purely bureaucratic means, which are not very effective and are less and less legitimate.

## **1. Controversial facets of the individualistic culture of today**

### *1.1. The company, from utility to socialisation*

As we said in the introduction, the period of industrial reconstruction that followed the Second World War gave companies a utilitarian production role, in a context in which the need for infrastructure seemed unlimited. This initial observation needs to be qualified, however. In retrospect, it can be argued that this period was accompanied by the establishment of a particular set of core cultural values, in particular hierarchy, stability and merit. This set of core values is largely behind us, but that does not so much mean that any form of culture is absent from the interplay of economic transactions as that culture has been maintained in a specific form. This is not just a trivial observation. With hindsight, it strikes us as having twofold significance: on the one hand, it implies that it is possible to make trade subordinate to values without giving in to the lure of an entirely market-free world; on the other hand, it shows that this continues to be a crucial issue within production units, foreshadowing future managerial developments, and indeed a succession of transformations in the sociology of work. It seems to us that this briefly conjures up the entire cultural backdrop to the development of such institutions as the welfare state and national industrial relations systems. At the same time, it must be acknowledged that these institutions were themselves a means of channelling these values, giving them status and political form and placing them at the heart of the conflicts in public life. An important consequence of this process was that it ensured that these values were not unthinkable and that they could be discussed and contested. The events of May 68 encapsulated this achievement. They consigned to history a set of core cultural values that had been overtaken by events, but at the same time revealed the power of the cultural trends at work in modern economies.

The fact remains that this cultural rootedness was not seen in these terms at the time. The values of stability, hierarchy and merit seemed to be more the vestiges of a fading past than the reflection of a novel determination on the part of governments to incorporate economic growth in a scale of values that made it possible both to justify and to limit it. Furthermore, the general role of

companies was still that assigned to them by most of the theoreticians of the time, starting with Keynes, namely a utilitarian role of meeting of society's need for infrastructure, as effectively and profitably as possible. If the emergence of the issue of flexibility from the 1980s onwards is particularly significant, in both the United States and Europe, it is because it arose at a time when the general role of companies was changing. As Sainsaulieu argued (1977, 1992), companies can be said to be supplementing their utilitarian function with a socialisation function, to the extent that in some cases more importance is afforded to the latter than the former.

It is not possible here to go into the details of the origins of this change, but it is worth mentioning some of its features. For the sake of concision, we shall quote three. The first is not new, but is worth repeating. It concerns that the legitimacy of rationalisation and streamlining practices. As Weber pointed out early last century, abstract rationality is not something that is meaningful for those concerned. Yet meaningfulness is a prerequisite for collective work, for it alone provides the justification needed to mobilise employees to deploy their energy in pursuit of aims other than profitability. The main purpose of affirming the socialising role of the company would therefore seem to be to provide legitimacy for firms' strategies for achieving effectiveness, care being taken to elicit and sustain the employees' consent.<sup>3</sup>

The fact is that this socialising role is seen more and more in terms of autonomy as utilitarian constraints become harsher, but also as society comes to portray the individual as being increasingly free of systemic constraints, be they family-related, organisational or bureaucratic. In other words, there is all the more need to "humanise" companies as they appear "inhuman" and as fewer and fewer individuals can cope with this by identifying with, and merely reproducing, socialisation mechanisms handed down by earlier generations – Dubar talks in this connection of an "inherited identities" crisis (Dubar, 2000). There is, however, a crucial downside to this development: the emergence of an increasingly autonomous socialising role also shows just how impossible it has become to offset identity-based rifts and traumas with mere utilitarian compensation, whether on the part of the company – in the form of negotiations on salaries or bonuses – or the welfare state. The growing vulnerability and precariousness that go hand in hand with the spread of flexibility are increasingly impervious to the regulation methods specific to industrial society, even though these are potentially more numerous and more widespread than they used to be.

The fact remains – and this is the last feature – that even though companies seek to adapt to a constantly changing cultural context, this does not mean that they may legitimately decide what that context should be. The growing permeability

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3. This is what Boltanski and Chiapello, following in Weber's wake, call "the spirit of capitalism" (Boltanski and Chiapello, 1999, pp. 58-59).

between companies and their cultural environment, their role in forging the identity of individuals and the resulting risks of that identity being demolished do not mean that companies can become institutions with the power to decide, unilaterally, on the values that are to be held up as standards for everyone, now or in the future. If that were the case, it would be the autonomy of the world of politics that would be threatened. While the most pessimistic among us think we have already reached that stage, we believe, on the contrary, that it is still possible to rethink the methods by which the government intervenes in the economic and social field if we develop a keener grasp of the cultural issues related to the spread of flexibility. Teleworking is a case in point.

### *1.2. Teleworking as an example of multifarious flexibility*

The advent and spread of teleworking cannot be dissociated from the wind of change that has swept over working life, or from underlying social trends, such as the individualisation of lifestyles, the growing importance afforded to private life and the demand for greater control over one's working hours and one's time. Teleworking is also concomitant with the unprecedented development of information and communication technology (ICT) and with the determination of companies to streamline their costs on a massive scale, in particular those relating, directly or indirectly, to labour. For some thirty years now, teleworking has been developing largely informally in Europe, without an official agreement of any kind.

Teleworking implies "the decoupling of work activity from one material work place such as 'the office' ... as well as from prescribed working hours, work schedules, scripts and practices" (Tietze, 2002. p. 385). It is for that reason that we feel it is appropriate to talk of rifts in the spatial and temporal framework in which work takes place and, more specifically, in the unity of place, time and action that traditionally characterise the practice of any occupational activity. Felstead, Jewson and Walters (2003) situate these rifts in the very bases of the traditional exercise of managerial control, namely the "visibility" (the possibility of observing the worker) and "presence" (the opportunity for the worker to interact with colleagues) of workers.

The important point here is the great permeability associated with teleworking, in particular home working. Its introduction generally entails a redefinition of the boundaries between private and working time and space. Moreover, employees' motives for choosing to telework seem to lie outside the occupational sphere and are therefore impervious to the utilitarian logic of the firm that employs them. In practice, their demands are often expressed in terms of a desire for a better balance in terms of roles and time. Employees are overwhelmingly in favour of teleworking for mobility reasons, but also increasingly because of the greater independence it gives them to organise their work and working hours (Walrave and De Bie, 2005). The travelling time "saved" is used as working time, but also to do private jobs, such as driving the children to school. For all that, teleworking does not seem to constitute actual replacement time (for example,

one day's work in the office being replaced by one day's work at home) but, on the contrary, helps to lengthen working hours, and is more akin to super-imposed time (Taskin and Vendramin, 2004).

Teleworking is often associated with the perception of enjoying greater individual autonomy, in the sense of having more room for manoeuvre when it comes to organising one's working life, but also one's private life: teleworkers organise their day and working hours themselves and make their own decisions when weighing up work-related and family priorities. And yet, even today, teleworking is mainly available to highly-skilled categories of workers who already enjoy a large amount of independence when it comes to organising their work. So teleworking seems to be not so much a means of gaining independence that one would not otherwise have as something that reveals or enhances existing autonomy. The practice of teleworking does, however, entail delegating responsibilities to some extent and is still, when it is mooted, often equated with "greater autonomy", and certainly not with "greater supervision". Involving, as it does, physical distance, a variety of methods of managing working time or even "à la carte" time management, along with the use of ICT – which means the workplace is not the place where the result of the work is expected – teleworking therefore calls into question the conditions under which supervision is exercised. But does it do away with supervision entirely?

In 1999 Fairweather raised the question of work supervision, analysing technological means of ensuring close monitoring. He concluded that ICT was potentially a means of combining teleworking with close monitoring, going so far as to argue that this technology provided managers with more supervision indicators than were traditionally used to monitor workers "on site". The same conclusion emerges from a study carried out in a Canadian financial services organisation, where technological control was stepped up with the introduction of teleworking (Wicks, 2002). According to other authors, the supervision of mobile teleworkers "sometimes degenerates into harassment that may even encroach on their private lives, and increases the mental workload and work-related stress" (Vendramin and Valenduc, 2006, p. 61), making any increase in independence somewhat of an illusion. Lastly, Felstead, Jewson and Walters (2003) point to solutions introduced to deal with these problems as they arise, in the form of new ICT monitoring methods, but also campaigns to foster trust, in order to offset the fact that teleworkers are not present in the workplace.

One cannot but observe that teleworking develops in specific organisational environments, characterised by what could nowadays be described as "high involvement management" (Sisson and Marginson, 2003). A feature of such contexts is a certain type of approach promoting such values as loyalty and trust. Yet while it seems self-evident that it is necessary to establish a relationship between managers and employees that is based on trust, trust does not do away with the need for supervision. In practice, it can be a powerful monitoring tool, making the values mustered by individuals the very key to the firm's monitoring operations. This extension of the scope of managerial supervision is related to

what some authors have no hesitation in calling “identity regulation” (Wilmott, 2002).

It would seem that, in explicitly calling for a personal commitment, teleworking – which is characterised by the autonomy and initiative it requires of the worker – is contributing to the advent of a new social contract, which is no longer, as in the past, based on a trade-off of loyalty against job security but on involvement and competitiveness on the part of the individual in return for career opportunities offered by the firm (Veltz, 2000, p. 203). The idea of long-term loyalty or trust, a value that is on the decline in a world based on the precariousness of commitments, is, however, crucial to the success of teleworking. Here we touch the nerve centre of the cultural bases for flexible working: while habitual monitoring techniques are on the decline, while companies are basing their efforts to achieve efficiency on changes in lifestyles and while organisations are having to allow employees to be increasingly independent in the way they manage their time and space, flexible working comes up against an ambiguous, if not paradoxical, cultural context. On one hand, the establishment of a lasting relationship based on reciprocity is a prerequisite for the success of these new management practices. On the other hand, the factors that underpin loyalty and trust seem weaker than in the past, in that workers are less rooted in working communities, and the other elements making for reciprocity (job stability, long careers within the company, unchanging working hours, etc.) are losing much of their force.

Accordingly, it can be said that the recent spread of teleworking, because it involves reorganising both space and time, encapsulates more general trends characteristic of the move towards more flexible relations between employers and employees. There has been a substantial expansion of “project-based” or “results-based” work, in which employers set deadlines to be met or performance targets to be achieved, usually in the short term, without fully controlling the means by which these objectives are met. In return, employees may enjoy greater independence when it comes to organising their working time, but it would seem that they are also a vehicle for ambiguous cultural aspirations. Teleworking is one of the means of reconciling the pressure of deadlines and targets with the need to ensure that these constraints are offset by a certain quality of life. Not only are such arrangements provisional, rarely ideal and more often informal than formal (Taskin and Vendramin, 2004): they also enlist cultural criteria as a prerequisite for a new form of efficiency at work, without being in a position to solve the problems posed by this upheaval. While these new arrangements seem to be based on a “post-utilitarian” approach, the relevant decisions have yet to be taken.

### *1.3. Flexibility and individualism – Exactly how are they related?*

If truth be told, the idea that there are cultural aspects to economic exchange or management practices is not new. For instance, advertisers do nothing but ride on the wave of collective values, using them for functional purposes (for which

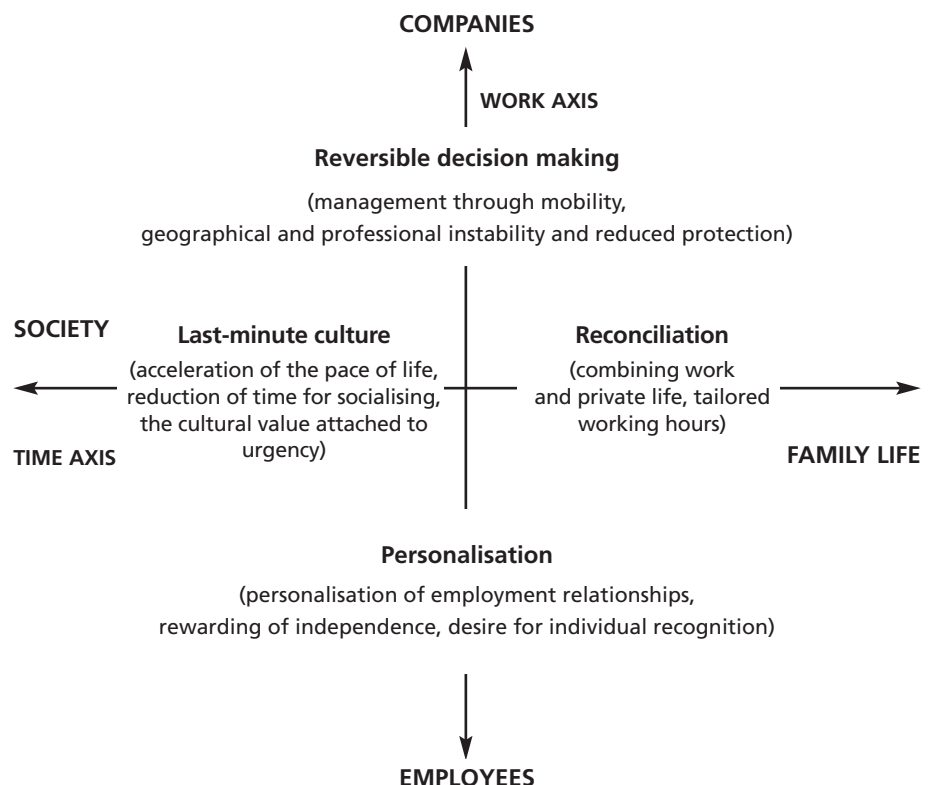
we can hardly blame them) or even distorting or manipulating them (which poses more of a problem). As to the broader sphere of human resources management, it would be an understatement to say that it has widely adopted this idea. Not a single management handbook that is published these days ends without a passionate plea for a cultural groundswell. The catch-all expressions “value creation” and “co-workers” have replaced those of “profit maximisation” and “employees”. At a time when the demand for profit is ever greater, these expressions encapsulate the notion that the focus on the rationale of profit-making must now be coupled with an emphasis on cultural aspects centred on social interaction, co-operation and mutual trust. However, companies do not always know how to take advantage of this new cultural emphasis. The shift can open up new prospects if it encourages those directly concerned to think again about the meaning of their work. Yet it can also result in platitudes, reeled out like a recipe book, devoid of any intrinsic meaning and merely transposing the utilitarian thinking from which these companies are seeking to distance themselves into the cultural sphere.

The fact remains that if we wish to conduct anything more than a purely superficial analysis, we have to ask what values apply today. In our view, they stem largely from the appearance of a different cultural mindset to that which characterised the industrial period, the main feature of which has been the emergence of new models of the modern individual. However, before these models are presented, two important points, which determine their content, need to be explained:

- firstly, there is nothing radically new in any of this. Our societies are no more individualistic today than they were in the past. By taking on the problem of the unequal distribution of wealth on its own, the welfare state enabled everyone to focus exclusively on their own well-being (Gauchet, 1989). Seen from this angle, individualism is merely one of the more obvious signs of advancing modernity, which means that every individual has universal rights and citizen status. What is new, however, is the exact opposite, namely the loss of confidence in the collective arrangements which did much to shape people’s individual paths but also provided an overall plan for everyone. The real break with the past is the way in which the individual’s path into modernity has been disconnected from its role as part of a political project;
- yet, it was precisely at the point that this split occurred that this “new individualism” found its way into the business sector. Pierre Veltz describes this better than anyone else: “organisation became the key performance factor. The drive for efficiency shifted, in a sense, from the individual to the group. However, at the same time, there was a resurgence of individuals, conforming less to a standard than in the past and using their unique skills and their own particular way of fitting these in with the functioning of a group. In some ways, the modern individual was reincorporated into the workplace. At any rate, it was intended that there should be less of a rift between the individual in society and the same individual at work” (Veltz,

2000, p. 17). This admission into the workplace was not straightforward: it was full of ambiguities, even contradictions. It was based on new demands on the part of employees (more flexible staff structures, more independence, flexible working hours, improved reconciliation of work and family life, etc.) but it was accompanied by a greater risk of vulnerability in the labour market. It was everyone for him- or herself, as there were no regulations or lasting protection for anybody. The burden of career paths – particularly the “ball and chain” of periods of unemployment or job insecurity – became increasingly difficult to bear. Individual freedom grew against a background of increased vulnerability. This point has to be emphasised as these ambiguities are used by many employers as excuses. They are also the cause of conflicts between the trade unions and account in large part for the problems faced by those trying to devise new models of collective regulation – although this varies according to the varying “social models” obtaining in different European countries.

The extremely broad theme of flexibility seems to us to stand precisely at the juncture between these two trends. Though this is by no means the whole picture, the spread of flexibility can be linked to four cultural paradigms, which amount to somewhat ambiguous ways of defining oneself as an individual, at work and in one’s private life:



Reversible decisions – in both private and working life – tailor-made activities and career paths, the prevalence of short-term goals and fragmented time, but also a desire for increased reconciliation between work and outside activities are the new order of the day. Only if this new cultural order is taken into account will it be possible to deal lucidly with difficult questions such as the following: if we want to control flexibility, should we not begin by questioning our consumer practices, in which we expect twenty-four-hour service and the shops to be open on the Sundays leading up to Christmas? Social insecurity is the darkest facet of what the term “flexibility” covers. But its emergence is also just the tip of an iceberg, in which mass mobility and reversible decision making have become the new benchmarks of our modern culture. These are points of reference which the authorities and employers use more than is necessary but refuse to combine with the requisite means for their success, such as the establishment of new rights. And yet it is uncertain that this is the only way of being able to declare oneself to be “modern”, particularly in a world which is haunted by “rootlessness”, as Weil (1968) and Arendt (1961) taught us nearly half a century ago. Starting from this premise, to which we will return below, combating social security would seem to require a dual approach in which capitalism’s inherent need for mobility is combined with the assertion of new rights to security but also, and above all, in which these demands are limited, showing that they reflect only some of the values that may be available and must be coupled with a new culture of rootedness and reciprocity.

Of course, this new cultural deal cannot be shared out in a linear manner according to people’s social backgrounds, life stories or professional identities. And the way in which society takes advantage of these criteria, using them as an area of negotiation or an object of manipulation needs to be followed extremely closely. In practice, the best and the worst case scenarios come about. Flexible hours are accompanied by insecure jobs and incomes and the reconciliation of work and private life is combined with an ever more stressful working environment. However, we should make sure we are not targeting the wrong issue or missing the point. Social insecurity is merely the reflection of a major cultural change, in which the accepted definitions of the modern individual are changing substantially and we are expected to believe that our choices are clear, although political and ethical circles are incapable of expressing their view on them. Yet, we cannot blame the market for accepting what it regards to be a fact. The market can be manipulative but it is also submissive: it uses the values of its time to operate discreetly and seek out new forms of legitimacy.

Consequently, there is no point in trying to lay the entire blame for contemporary social suffering with “individualism”. Modern individualism cannot be boiled down to egotism or independence. It is still a highly controversial concept even if – and this in our view is one of the major issues that could be addressed by the political regulation of the market – this controversy no longer forms part, or at least a sufficient part, of the political debate. The major problem is the political

illusion by which we are surrounded, which tends to make us think that the various components of modern individualism can be neither deciphered nor contested, particularly when this type of individualism makes its way into the corporate or working world.

The idea may be, in a sense, that the victory of the “last man”, so often predicted by Fukuyama (1993), has come about, and that modern individualism has reached its zenith through a harmonious combination of the market and human rights, against a background of economic globalisation. Yet, never have individuals felt more ill-at-ease than they do now in this remorseless and solitary confrontation with themselves. This is the “tiredness of being oneself”, which Ehrenberg (1998) talks of. One of the main problems therefore is the status that our democracies attach to discussion on the values which make up this “new individualism”. Too frequently we think that they are no longer an issue, whereas in fact they have never stopped being the source of violent conflicts throughout the history of modern society. Our societies have become so sensitive about this apparent triumph of individualism, which was actually only a half victory, accompanied by a complete reworking of the concept which caused problems in itself, that they feign indifference to what is causing the problem.

In the guise of promoting freedom, they sanctify the modern culture of ambiguous individuals weary of the politics which created them. However, neither the revolution, nor the market nor modern culture are sacred. We use the word “sacred” here on purpose because Weber’s thoughts on the subject cannot be ignored. The rationalist and materialist trajectory of the Western world can be interpreted as an unsuccessful attempt to relocate the question of “the sacred” in the manifold areas of economics, politics and culture. In other words, the West’s entry into the modern world can be viewed as the product of an ongoing battle between the complete desecralisation of human affairs – which itself forms the foundation of democracy – and the progressive re-establishment of sacred elements through identity politics or a declining sense of civic responsibility. Assuming that we do not want these uncertainties to be governed by the market alone or, conversely, to be managed with reference to a re-established religious tradition – in other words if we want these values, above all, to belong to everyone and be open to critical and rational debate – then there is an urgent need to rethink the way in which politics may or may not be able to address these matters and make them a subject of public debate. This is the aim of the second part of this paper.

## **2. Empowering society: a solution to state-market confrontation**

As stated in the introduction, the aim at this stage is naturally not to draw up a list of values, but rather to identify the ingredients of an approach or method. In view of the danger posed by a market left to its own devices, and without the certainty possible where the sole point of reference is a religion, what potential

lines of thought can be pursued? Is the state the answer – along with the elites which serve it or reinforce its role as the guarantor of social order?

The idea that “state politics” are by themselves capable of devising a scale of values making it possible to meet the challenges posed by market economics prevailed, and successfully so, during the initial stages of the rise of capitalism. This trend did not necessarily follow the French model of centralised government. The parliamentary democracies (Britain) and the negotiation democracies (Belgium and the Netherlands) themselves invented forms of political intervention in the management of economic and labour relations. At the same time, an idea common to all these different political systems was that of fostering a degree of territorial uniformity, allowing the elites the opportunity to establish themselves as the anonymous masses’ representatives, united by a sort of “identity-based pact” (Giraud, 2005).

From this standpoint the nation-state model became inseparable from what might be termed an “elitist” approach to economic and social issues in a very broad sense. This meant that suitably trained elites were capable of offering answers to problems considered, rightly or wrongly, to concern the national community. Even in the negotiation democracies, which have no central administration, the aim of educating elites was to provide the members of a general executive, whose role was to clarify, in retrospect, the functioning of the entire system. Regulation of the market economy accordingly took the form of what we shall call a bureaucratic containment strategy, resulting in the publication of numerous administrative rules and regulations, which were alone to suffice to delimit the boundary between private and public interests. At the same time, capital and labour implemented the “Fordist compromise”, whereby they agreed on a number of major characteristics of work (working hours and conditions) and redistributed productivity gains in a context of strong growth. This strategy was linked to a stage of individualism, in which the connection with the political sphere was vital to economic and social progress. However, there was another important side to this strategy, since it included the vague, but well-accepted, idea that once conflicts of values had been linked to political projects, politics could be practised “elsewhere”, at a level above society itself.

It is that very approach which the authors now consider to be a thing of the past. The spread of new individualistic behaviours, whose inner tensions flexibility brings to the fore, goes hand in hand with a new relationship vis-à-vis the public sphere. While contemporary individualism is freeing itself of politics, which formerly gave it strength and legitimacy, it also reflects the emergence of increasingly emancipated societies, societies which no longer envisage referring to established political authorities in order to have them unilaterally set the trajectories they are to follow or systematically determine scales of values that govern individuals’ lives. This made the idea that politics would take place

“elsewhere”, or “above” the members of civil society, increasingly unacceptable for at least three reasons:

- the complexity of real life, which escapes organisations out of touch with “grass-roots experience”, whether they belong to the market or the state;
- the responsiveness of local or transnational players, who are now capable of obtaining critical insight into their real situation and the political future of the society to which they belong;
- the vast diversity of people’s ideals in life, which no longer allows a sole authority, no matter how legitimate, to embody all of its fellow human beings’ reference values.

A bureaucratic containment strategy is not without advantages. A modicum of rule-making often proves necessary to allow the implementation of an overall regulation process. However, this strategy can be seen to be technically inadequate and culturally outmoded. The need to give the market new roots in society and the public arena appears more essential than ever before. What avenues might this take? We can see three possible options.<sup>4</sup>

### *2.1. The “procedural” option: pluralism and inequalities*

There can be no question of exploring in detail the implications inherent in the concept of procedural ethics or action. That would be all the more time-consuming in that this is an area of reasoning comprising many different, closely entwined branches. It can merely be said that this “option” – a term to be construed in its broadest sense – is consistent with the currently most popular schools of political and moral philosophy, and also of sociology and legal thinking. What does it involve? To begin with, this approach regards the plurality of lifestyles and social situations as an inescapable fact of life (Rawls, 1987). It argues that our complex democratic societies, founded on the principle of autonomy of rational individuals, result above all in a pluralism of values, which makes the search for common substantive purposes an impossible – and potentially hazardous – task.

The proponents of this option stress that arguments and grounds for government action cannot be based on substantive ethics. Politics must be neutral vis-à-vis concepts of morality: “neutrality can be seen as a ‘specific constraint on the justifications that can be advanced for a public policy’. It concerns justification of the rules governing public affairs rather than the objective of political practices and institutions” (Berten, da Silva and Pourtois, 1997, p. 12). Politics is therefore also conceived in procedural terms. In this context, state neutrality becomes the foundation of political action: “the validity of political judgments lies solely in

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4. The subsequent paragraphs are taken directly from de Nanteuil Mirabel and Nachi (2005).

compliance with the process of justification of a purely formal requirement of neutrality vis-à-vis disputed concepts of morality" (ibid., p. 13).

We shall not discuss what underlies this desire for "neutrality" here. As regards political regulation of flexibility, it can simply be added that this approach would amount to conferring on the state the role of global co-ordinator, so as to ensure that procedural rules of debate are followed in the disputes which cannot fail to arise around the implementation of given practices. At the same time, this role would deliberately rule out any form of more substantial action, which might possibly result in the definition of rules binding on businesses or economic agents. Similarly, this option would amount to placing collective bargaining on a likewise essentially procedural footing, by ensuring that the outcome of labour disputes was consistent with observance of formal commitments entered into in matters of work and employment, without any particular standard-setting impetus. In a way this would involve establishing "method agreements" that can be used to address the practicalities of implementation and also the remedies available against certain abuses of flexibility, but without questioning its principle.

This option offers a number of advantages: it takes account of the particularly controversial nature of flexibility; it can also allow a reduction in the lawless areas referred to earlier, by laying the foundations of a legal stability disconnected from fluctuations in employment relations. This is precisely the key feature of the concept of flexicurity defended by the European Commission, which in fact ties in with a procedural approach to government action, a situation that doubtless explains the expression's popularity.

However, this option also has many drawbacks. It in fact involves a risk of disregarding a major sociological development: in matters of flexibility the fragmentation of situations generates new types of inequalities on account of the "legal vacuum" it creates and the inability to end those practices that prove most disorientating for employees. To put it more simply, the procedural option, which favours pluralism, may take on quite negative overtones where it is applied, for instance, to the growing diversity of employment statuses. This is because it helps to conceal the mechanisms underlying recourse to these forms of employment and the subsistence of new dividing lines within the labour force.

Despite its advantages, it is therefore likely to reinforce the existing situation and, in practice, to compel the state to adopt a position of inertia in the face of a tangle of contradictory arguments and stakes. This approach might indeed lead to the emergence of new rights, with the aim of making career paths more secure. However, apart from the legitimising effects mentioned above, it could also result in greater social domination of individuals who do not have the resources – beyond the minimum legal guarantees – to undertake the independent development of a project and pick up the pieces of a fragmented career. This raises the question of – full or partial – "substantivisation" of the regulation process.

## *2.2. The “neo-substantive” option: between individualism and state control*

From a logical standpoint, the “neo-substantive” option is an attempt to respond to the above deadlocks by reasserting the essential role played by the state in steering the “ship of wage-earning society through the menacing reefs to be found on all sides” (Castel, 1995, p. 474). A state which should, so to say, pull itself together in the face of the renewed “commodification” taking place in labour relations. Although no explicit claims along such lines are made, this option calls for a “strong social state”, the guarantor of sustainable social protection. It can nonetheless be noted that this is not a mere revival of the welfare state. In this context, government action would no longer be confined to the role it long played during the great age of the rise of industrialism, that of legitimising the market as the sole purveyor of wealth, while looking after the system’s inevitable rejects through a universal, anonymous redistribution policy. The question of individualism is central to the renewal of the welfare state. Castel is doubtless one of the contemporary authors who best describes the problem: “the public authorities have yet to find their *modus operandi* in a world characterised by two key developments – growing individualism and compulsory mobility” (Castel, 2004, p. 93).

Nonetheless, this recognition of the issue of individualism does not lead to a purely procedural concept of regulation. The approach is, one might venture to say, the opposite. Confronted with the increasingly individualistic nature of society, the political sphere’s distinctive trait would seem to be its very tendency to pursue or resume a somewhat universal goal, an ideal for society as a whole, which can be said to be the counterpart of the tidal wave of individualism. Gauchet best expresses this idea: “democracy’s triumph over its enemies is the sign that a turning point has been reached: there is no longer a source of alternative legitimacy, justifying the sacrifice of individual freedoms, whether for religion’s, tradition’s or history’s sake. ... We are no longer at the mercy of aggressive revivals of the collective interest at the expense of individuals. ... If there is a danger on the horizon, it is that of a collapse of the collective spirit before the assertiveness of individuals” (Gauchet, 2002, p. xi). In this sense horizon refers, whether by implication or expressly, to a certain moral ideal. More precisely, its objective is to preserve an area of substantive ethics as a foothold for government action.

This time the link with Durkheim is clearly asserted. The objective is indeed to identify the conditions of a new modern morality, in the light of the growing rifts in society against a backdrop of globalised competition. The moral and cultural pluralism on which the “proceduralists” base the previous scenario naturally remains of considerable relevance, since it so closely follows the main lines of contemporary individualism. Yet, that does not mean that all forms of reference to a substantive ethic, to a certain concept of morality, are abandoned. In reality, the objective is not so much to express an ideal of morality as to restore the

conditions of a collective ethic capable of combating the trends which undermine social cohesion. Although a clear claim is being laid to cultural pluralism, this approach cannot do without a reference to substantive values, at least if it is to attain a minimum of effectiveness. In other words, the objective here is to think about the political conditions that make it possible to maintain an effective pluralism of values in the face of the hegemonic effects of the market. That would entail a reaffirmation of public authority, capable of providing a hierarchy of values which link the market to goals that cannot be reduced to the market itself.

In the case of flexibility the state would first and foremost tackle the roots of economic and social insecurity by getting to grips with the growing disparity of employment relations. That could encompass measures binding on economic operators, such as the application of thresholds or the taxation of improper employment practices. In view of the reappearance of numerous problems, in particular the multiplication of health risks and the emergence of new social risks, this approach could at first glance be perceived as fairly feasible. It nonetheless comes up against the difficulties posed by certain key aspects of individual citizens' changing attitude to politics.

The great risk with this approach is indeed that of giving the state full responsibility for the rule-making process, whereas the situation described here shows a need for decentralised legislation capable of keeping pace with the diversity of real situations on the ground (de Munck and Verhoeven, 1997). In addition, it could help discredit economic stakeholders as regards their role in a legislative activity which concerns them directly and which, by definition, cannot do without their contribution. Lastly and above all, it risks taking flexibility for granted as a uniform concept, determining in an arbitrary manner what is and is not desirable and legitimising a certain threshold of practical application.

The dilemmas described above show, however, that the thresholds vary considerably according to the sector concerned and that flexibility entails a constant effort to redefine the limits of what is possible. Above all, they are a reminder that one of the major political challenges of our time is enabling the various stakeholders in society to espouse flexibility practices in a manner which they deem compatible with people's aspirations in life and to re-appropriate the existing or future regulations. This cannot be conceived as a mere "tolerance" on the part of the public authorities; on the contrary, this commitment or appropriation stage must be regarded as a vital tool for the development of standards relevant to society as a whole. It can be said in passing that this is perhaps one of the most novel aspects of contemporary individualism, in that it cannot be perceived merely as a privatisation of decision making or a disintegration of the public sphere, but also highlights the new potential of civil society and those playing a part in it. Far from being confined to the role of "adjuncts" to a political ideal defined above them, they are proving to be increasingly capable of themselves embodying concepts of morality, over which the public authorities can no longer

claim to have a monopoly. Despite the threats which it poses to society, contemporary individualism simultaneously opens up new possibilities; it confers an entirely new moral and political status on civil society mechanisms.

### *2.3. The “partnership” option: democracy, critical involvement and inter partes debate*

This brings to light a third option, which takes account of the advantages offered by the previous approaches but suggests construing the problems differently. What is important this time is establishment of the debating platform itself. The aim here would be to enhance the key role played by discussion between stakeholders in society, simultaneously extending the scope of collective bargaining to new subject matters (businesses’ efficiency criteria, health issues, job insecurity, reconciling work and private life, etc.). At the same time, this possibility would entail broadening the traditional debating platform to include players not usually present: local and regional government representatives, consumer associations, associations representing families, and so on.

In a way this option draws inspiration from the criticisms of the procedural concept of political action which are advanced by “communitarian” thinkers. From the communitarian angle, “it is not possible to give an abstract or ‘essential’ definition of the ethical value of practices or ways of life. Determining standards of ethical excellence always leads us back to tradition itself, to a given historical community and the place an individual holds in it” (Berten, da Silva and Pourtois, 1997, p. 10). Similarly, this option places considerable importance on the decentralisation of legislation, the insertion of individuals in life communities imperious to any form of centralised institution. It accordingly challenges the principle of the “neutrality of political action”, but without considering that such action is the sole preserve of the state.

This option nonetheless clearly departs from the communitarian standpoint in that it continues to assign the state a major role in the organisation of regulations. A major role, but under a novel, reversed form. What is at stake is the motivating force underlying an overall political rule-making process in which the source and substance of regulations are no longer a matter for an enlightened political elite but originate from civil society. A process in which, far from being eliminated, the state’s role would, conversely, be to acknowledge, support and lend legitimacy to the regulations implemented in a society confronted with the changes taking place in competition and the challenge of multifarious flexibility. In reaction to the procedural retreat, it is in reality an attempt to combine the “communitarian” and the “neo-substantive” traditions. This third option accordingly displays three characteristics:

- firstly, it acknowledges the primary moral and political competence of stakeholders in society, in the routineness of their participation in social

affairs. As Boltanski and Thévenot wrote (1991), stakeholders in society are always able to make apparently very harmless decisions, citing fairly broad-ranging types of justifications, which are ethico-political in scope. This local dynamic is based on the participation and commitment of the stakeholders, but it also simultaneously gives a central role in society to the criticism and analytical consideration exercised by its members. It reflects a partial – albeit decisive – contribution to the standard-setting activity of a human community;

- secondly, this approach at the same time shows the growing impossibility for the state to adopt an attitude of comfortable self-assurance, to rely on the soundness of knowledge it alone holds and distributes. Here, we concur with Honneth when he says that, beyond the forms of recognition made possible by a loving or a legal relationship, an emotional fabric and a legal foundation, there is a need to think about the terms of a social ethic confronted with the implications of advanced capitalism. However, for all that it is not possible to “fill the place thus left empty .... Since deciding whether the values (linked to political action) are pointing in one or another direction, whether they are or are not compatible with the conditions of existence of a capitalist society, is a task not for political theorists but for social struggles yet to come” (Honneth, 2000, p. 214);
- thirdly, this approach prepares the ground for discussion and negotiation between stakeholders in society in two different ways. First, by ensuring that the “traditional” social partners – management and unions – negotiate the conditions of use of various forms of flexibility. The aim here is to give these different players responsibility upstream from the decisions. For employers, that entails calling into question their monopoly of know-how on these issues and opening up the flexibility decision to discussion and negotiation. For the trade unions, it also entails entering into the complexity of reality, accepting that certain forms of flexibility may satisfy the particular, individualistic desires of certain employees and recognising that the conditions of effectiveness have changed. The objective is indeed to reach agreement on the boundaries, the frontiers that can be drawn between the acceptable and the unacceptable. However, that is possible only in so far as the question of values we have already raised is not kept out of the social debate, but on the contrary restored to a central position in it. One condition making it possible to move in this direction would in fact be to involve participants who may have alternative values in the debate or traditional collective bargaining: associations of unemployed people or those in precarious employment, consumers, local political representatives and members of local associations, representatives of families. For example, how can agreement be reached on the theme of teleworking or

the, broader, subject of family-work balance without involving the family players themselves in the discussion? As Herzog (1994) points out, the objective is indeed to “empower society” by ensuring that political decisions are carried and supported by underlying social dynamics.

Although enhancing the security of individuals and career paths can indeed be seen to be central to a new need of society in view of market demands, and although it doubtless foreshadows one of the components of a new “social compromise” in the countries of Europe, it above all entails rethinking forms of political regulation of flexibility and the market. The idea is not to do away with all state intervention. Concurring, in this respect, with much of Hegelian tradition, we consider it important to recognise that the state continues, even in the age of globalisation, to be home to a political community in which all are called to recognise themselves as citizens, to the extent that they allow others the same recognition, and in this way learn constantly to surpass themselves.

However, as Weil argues, it can be added that this substantive unity is in itself legitimate only in so far as it paves the way for a political ideal, whose substance it does not completely embody, and helps to forge a set of values which may serve as a reference for everyone. In this field, the recommendation made in the Supiot report (1999) in favour of an “occupational state” – or again the development of an “occupational social security” – is particularly interesting, since it combines the establishment of new rights with reassertion of a cultural matrix attentive to the needs for stability, rootedness or sustainable reciprocity.

The authors consider that it is solely by linking these different levels that our democratic societies will be able to set the limits of what is unacceptable, to redefine in depth their cultural orientations in the face of an ever-changing market and to root the market economy in an autonomous political practice.

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## **B – Reconciling labour market flexibility and social cohesion: a methodological tool proposed by the Council of Europe**

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### **Introduction**

Striking a balance between labour market flexibilisation and security nowadays represents a key challenge to European and national policy making. Enhanced flexibility is seen as a necessary condition for European economies to survive in a globalised, much more competitive and at the same time much more diverged economy, whereas security is considered indispensable for preserving social cohesion and human dignity in our society. Obviously, the question here is how we can deal with this double expectation, which has been referred to as the “flexibility-security nexus” (Wilthagen and Rogowski, 2002, and Wilthagen and Tros, 2004). How can we prevent the baby from being thrown out with the bath-water?

Traditionally, the response towards unfavourable social effects of labour market flexibilisation, once perceived, has been that of – attempts to – compensation or counteraction. Trade unionists, political parties, labour lawyers and international bodies such as the Council of Europe, the International Labour Organization and the European Parliament have taken the lead here. For example, in a number of countries endeavours are currently being made to improve the situation of atypical workers such as on-call workers, temporary agency workers and fixed-term workers. Such a strategy of compensation not only presupposes a good deal of awareness and analysis of the problems at hand, but also faces its limits, as it appears “reactive” rather than “proactive”. A second issue here is that negative consequences of labour market flexibilisation are often observed at the aggregated/macro level, whereas they emerge and are being shaped at the micro, that is firm level.

With its Social Cohesion Forum 2005 on “Reconciling labour flexibility with social cohesion”, the Social Cohesion Development Division of the Council of Europe addresses the challenge to initiate new policy frameworks in this field. Importantly, flexibility and social cohesion are not viewed as being fundamentally and permanently at odds with each other. As defined by the Council, social cohesion is “the ability of a society to ensure the welfare of all its members, minimising disparities and avoiding polarisation” (Council of Europe, 2004, p. 3). This definition implies that social cohesion cannot be attained and established once and for all,

but has to be (re)produced continuously. Moreover, the definition presupposes social commitment to reduce disparities to a minimum and to avoid polarisation. Even countries that are well advanced in this respect cannot lean back in self-satisfaction.

New developments in society as a result of the challenges of globalisation can put its capacity to minimise inequalities to the test. Flexibilisation of the labour market (in its turn a response to increased competition) represents one such trend that has the potential to undermine social cohesion. A social cohesion perspective on flexibilisation of the labour market is therefore both innovative and necessary, as it complements other perspectives such as a social-psychological perspective (see, for example, Sennet, 1998, and Burchell, 2005).

To help and encourage policy makers and managers to consider the various aspects of social cohesion in their planned regulatory reform measures to make the labour market more flexible, it would be useful to provide them with ideas on how to achieve compatibility between both ends. In view of the foregoing, the starting point of this paper is that there is a need for a tool, a methodological tool, that:

- systematically raises the awareness of the possible impact of labour market flexibilisation on social cohesion;
- can be used both reactively and proactively, and for monitoring *ex post* and *ex ante*, that is prior to the introduction of flexibility measures and reforms;
- draws attention to the possible strategies that are able to enhance both flexibility and social cohesion; a fruitful combination or synchronisation as suggested by the concept of flexicurity (see Wilthagen, 1998, and Wilthagen and Tros, 2004);
- can be used at various levels and by various actors, among which legislators, policy makers and, last but not least, workers and employers and their representatives.

Thus, ideally, such a tool – a policy checklist to help reconcile labour flexibility with social cohesion – should encourage “active flexibilisation”, in which citizens and their preferences and interests play an active role, and discourage “passive flexibilisation” which is simply imposed on people (employer-led flexibilisation). Active flexibilisation can contribute to people’s participation in the labour market (for example, facilities for combining work and care, such as flexitime, or work and education) and, in general, to people’s empowerment.

A first exploration of the possibilities of designing a policy checklist, focusing on the case of temporary agency work in the Netherlands, has been reported by Wilthagen and Houwerzijl (2005). The aim of this paper is to propose a first sketch of a policy checklist that stimulates and enables relevant actors at relevant

levels of society to take into account the social cohesion dimension of labour market flexibility. In order to do so, we build on extensive work that has already been undertaken by the Council of Europe, notably the Council's tree model on social cohesion and the *Concerted development of social cohesion indicators – Methodological guide* (2005). In fact, the policy checklist could be seen as an application of the methodological guide. We were also inspired by the efforts of the ILO to operationalise their concept of "decent work" (see International Labour Review, 2003, and Ghai, 2006) and tools such as the APEC-OECD Integrated Checklist on Regulatory Reforms<sup>1</sup> and other Council of Europe policy making guides.

As a next step (section 1) we will revisit the Council's tree model on social cohesion to identify the key elements of the concept of social cohesion. Subsequently, we will relate these to the area of labour market flexibility (section 2). Then, we will discuss the levels of analysis and the social cohesion indicators as developed by the Council (section 3) and consider the possibility of including part of these indicators in our policy checklist (section 4). In the last section (Appendix), we will present a draft policy checklist.

## **1. Revisiting the Council's tree model on social cohesion**

In its methodological guide, the Council uses the image of a tree to show the multiple interactions of three key dimensions of social cohesion. The tree model was developed to come to a better understanding of social cohesion. Stating that social cohesion must be an objective is one thing, understanding the underlying conditions for this general objective is quite another. The model distinguishes three dimensions of "social reality", explained and elaborated in the methodological guide (Part II, p. 29 onwards):

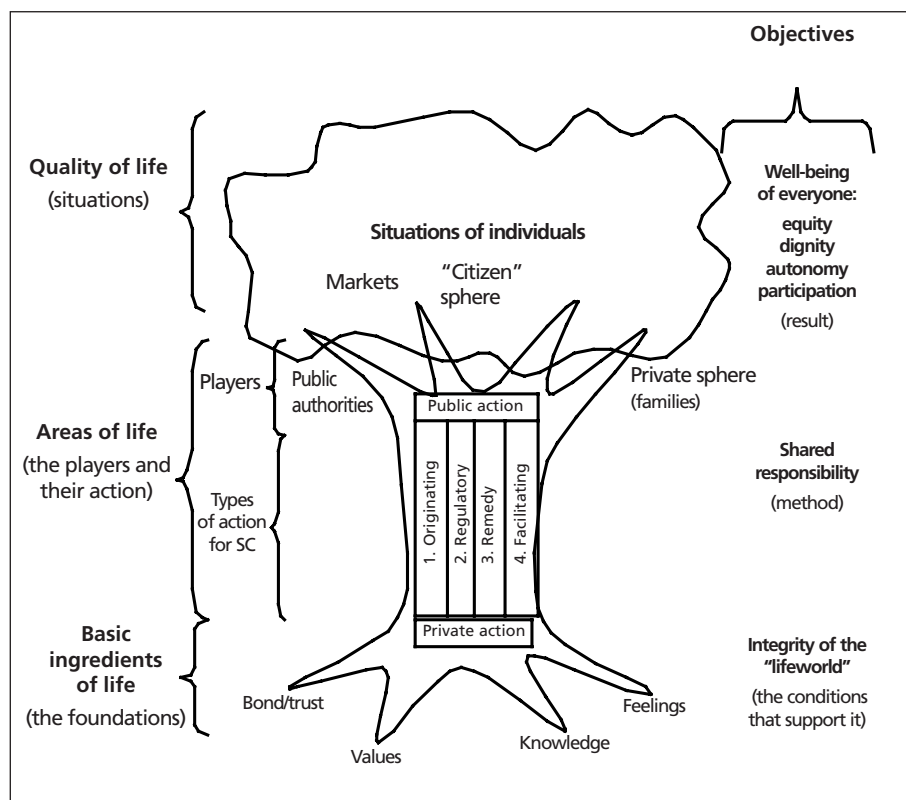
- the quality of life (situations of individuals and groups when it comes to their well-being);
- the various areas of life (actors or stakeholders and their actions, whether of a public nature – that is activities of general interest – or of a private nature, such as the production of goods and services);
- the basic components of life (also called the "invisible components" of the "life world",<sup>2</sup> made up of informal bonds, relations of trust, values, emotions, shared basic knowledge, etc.

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1. See <http://www.oecd.org/dataoecd/41/9/34989455.pdf>

2. This concept reminds us of the concept of "life world" (versus "system world") as used by Habermas (1982, p. 547).

**Figure 1 – Tree of the key dimensions of social cohesion**



As a normative concept, the tree model defines objectives for each of these dimensions, namely:

- with respect to the quality of life, the pursuit of well-being for each and every person, with due regard to four aspects of well-being:
  - equity in access to and exercise of rights;
  - dignity and recognition, or respect for each individual as a human being;
  - all the conditions for autonomy and personal, family and occupational fulfilment;
  - the possibility of participation and commitment, in the sense of individual or collective influence on societal choices;

3. Although Dimension C undeniably plays important role in society, it is not easy to make this dimension explicit. Moreover, values in general may differ in each country. They are at least partly culture specific, as was recently shown in a project at Tilburg University, entitled the European Values Study. See Halman, Luykxand and van Zundert (2005).

- with respect to the areas of life, the method of shared responsibility of the players in society to ensure the welfare of all its members;
- with respect to the basic components of life, the “life world”, ensuring its integrity, that is the preservation of the conditions that support it (values, confidence, solidarity, etc.).<sup>3</sup>

In terms of the tree model, Dimension C (basic components/life world) corresponds to the roots of the tree. The roots of a tree are indispensable for its healthy growth. Dimension B (actors/methods) is represented by the trunk and branches of the tree. The trunk and branches of a tree are an indication of the (healthy or unhealthy) growth process of the tree. This is the part where action takes place. Finally, Dimension A (the quality of life/well-being of its citizens) is caught by the image of the leaves (or blossoms) of the tree (see Figure 1). At this level, the quality of the tree is demonstrated.

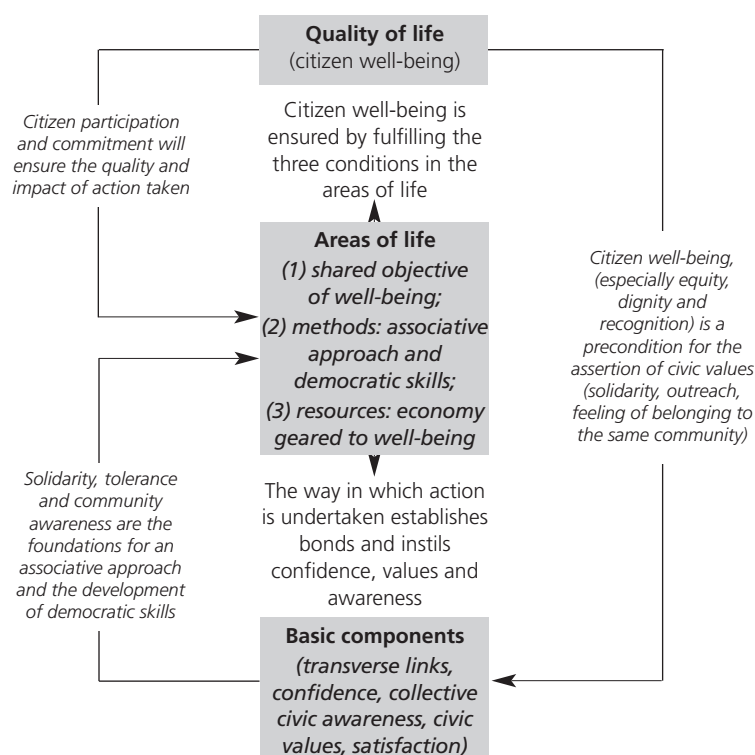
The image of the tree is well chosen for such a complex phenomenon as social cohesion. Just like the roots, trunk, branches and leaves of a tree, the three dimensions are interrelated. Like the leaves, Dimension A is the most visible part of a socially cohesive society. At this level, four major effects are displayed, the so-called four dimensions of well-being, that is equity, dignity, autonomy and participation. Thus distinct effects may be seen as the final results, which are achieved via certain methods, actions and actors (Dimension B), which in turn are based on basic values (Dimension C). But the perspective can also be turned around: in fact, the three components can be seen as a virtuous circle, because improvement at each level fosters improvement at another level, as is shown in Figure 2.

In this sense, social cohesion is not only a state but also a process. Accordingly, to achieve the objective of social cohesion the quality of the process is crucial. Society’s ability to ensure the well-being of all through the shared responsibility of the various players involved presupposes a democratic expression of citizenship in what can be called an associative approach, where each individual assumes his or her role as a full member of society and accepts responsibility as such vis-à-vis others.

## **2. The compatibility of labour market flexibilisation measures with social cohesion**

Using the tree model, as summarised above, may provide a means of innovation in the analysis of the flexibility-security nexus by modelling the multilayered impact labour market flexibility has on society, giving a complete and inclusive picture of the issues at stake. Thus, a dynamic model may be elaborated that could firstly be used as a descriptive model to analyse (and compare) policies. If, for instance, new or recent legislation is considered or has been enacted, a first step could be to identify the main goals and values underlying the legislation as expressed by the legislator in various legal memorandums. A next step would be

**Figure 2 – Summarising diagram: the “virtuous circle” of the core constituents of social cohesion (Council of Europe, 2005, p. 45)**



to examine the main procedures and methods included in designing as well as implementing these measures. Thirdly, the (likely) effects of the new measure can be studied. Evidently, supranational legislation and policies as well as collective labour agreements, both at the sector and company level, and human resources management policies could be analysed and “tested” too. In this way various roads and effects regarding flexibilisation could adequately be mapped out and evaluated (see, for example, Jager, Wallace and Haas, 2004, reporting on the various modalities in different countries). A more normative position would be to use the model in suggesting that certain values should be taken into consideration and certain methods should be used so that certain effects are obtained that do justice to social cohesion and to society’s capacity in this area.

It is important that we realise that the concern for social cohesion is driven by value-oriented rationality, in the words of the famous sociologist Max Weber. However, flexibilisation processes are predominantly initiated from economic motives or interest, namely goal-oriented rationality (quite clearly, flexibilisation is not a value as such, but rather, in the eyes of many commentators, something

that is inevitable). Therefore the main operation and goal of a policy checklist is to stimulate the insertion of value rationality into (economic) goal rationality. Another, and perhaps better way of putting this is to say that certain methods need to be used to synchronise value rationality and goal rationality so that favourable effects, that is from a social cohesion perspective, will be obtained, warranted or enhanced. This line of argument matches the Council's position on "integrating the social dimension into economic life" (Council of Europe, 2004). Yet, the difference between value and goal rationality should not be exaggerated as values can and are also pursued with rational means.

Generally, a checklist to help reconcile labour flexibility with social cohesion should raise three main questions in the minds of its users, which reflect more or less the three dimensions of the tree model. We will now formulate and discuss these three questions, starting with the top of the tree – the leaves – then going right down to the bottom, namely the roots of the tree, after which we climb up again via the trunk and the branches of the tree. Thus, we descend from Dimension A (quality of life), directly to C (basic fundamentals of life), and then back again to B (areas of life). This sequence correlates to the idea of the virtuous circle, in which citizens' well-being (especially equity, dignity and recognition) is a precondition for the assertion of civic values (solidarity, outreach, and feeling of belonging to the same community). Moreover, both citizen participation and commitment (Dimension A) as well as solidarity, tolerance and community awareness (Dimension C) are important for the approach, the quality and the impact of the action (Dimension B) taken.

### *2.1. Does the process of flexibilisation result in effects that contribute to, or at least do not harm, social justice and cohesion?*

From a social justice and social cohesion perspective four types of effects on citizen well-being – as included in Dimension A of the tree model – are relevant as a result of processes of labour market flexibilisation. These effects can be used to benchmark labour market and employment reform. Below we (re)define the effects on behalf of their application in the areas of labour market flexibility/flexibilisation:

- equity: workers affected by labour market flexibilisation should have/keep or at least have the prospect of similar income, working/health conditions (in terms of the ILO: access to decent work, see Ghai, 2006) and access to social security compared to standard/core workers. Labour market flexibility can help to ensure this access by creating employment but it can also endanger this access when some (vulnerable) groups of workers have to bear all the negative aspects of flexibility (labour market segmentation). Labour market flexibility should thus strengthen the permeability and transitional nature of the labour market, but be accompanied with measures to guarantee decent work;

- dignity: workers affected by labour market flexibilisation should not be treated as a specific, less-worthy segment of the labour force. Job or employment insecurity can be said to affect one's dignity. Depending on other conditions, it brings on feelings of stress that, especially in the long run, can affect the quality of life of individuals and their families (Burchell, 2005);
- autonomy: workers affected by labour market flexibilisation should be provided with opportunities for further training, education and career and personal development, and to possibly make transitions to more permanent jobs (if they so wish). So, flexibility should not limit career opportunities but broaden them. An example of a negative effect of flexibility on autonomy is the "budget restriction" used by banks, due to the fact that a flexible worker cannot prove evidence that he or she will be employed in the future (which can create housing problems);
- participation: all (affected) workers (or their representatives) should be able to participate, become involved and/or be represented (either directly or indirectly) in the flexibilisation process and its outcomes, and to be provided with the necessary information and facilities to do so adequately. This is easier said than done because insecurity regarding their chances of staying employed may make workers less eager to use their legal right to participate in, for instance, work councils.

In measuring the effects we should be aware of the fact that the starting point (t1) of various countries, sectors or companies can differ significantly. Therefore measurements and comparisons in relative terms should be preferred over absolute terms. In an ideal situation a measure of a subsequent situation/moment (t2) would be available, in particular to monitor progress.

Apart from using a policy checklist, legislation, legislative memorandums, policy documents, collective labour agreements, company or workplace regulations, and minutes of debates and discussions can be considered *ex post* to map effects, but first and foremost there is a need for evaluation studies and statistics that provide information on the entitlements of those affected by labour market and employment flexibilisation, the actual use of these rights and the empirical effects that have occurred (or are likely to occur).

## 2.2. *Are values of social justice and cohesion preserved or contributed to in the process of labour market flexibilisation?*

Following the Council's tree model, at the level of the basic components – Dimension C – we look at the quality of interpersonal relations. In the negative sense, Richard Sennett's thesis that flexibility changes people's character would be a good example of the impact of flexibility on the foundations, the basic components of social cohesion. If reciprocity suffers, if mutual trust and confidence

are in question, if community is outdated in a flexible world, then social cohesion would be faced with a problem at its value level. In a positive sense, good quality social cohesion would materialise in the ability to develop bonds that cut across traditional bonds, to develop bridges between the groups that coexist separately from one another. These cross-sectoral bonds have a vital role to play in democratic skills, especially with regard to intercultural dialogue. It would furthermore materialise in all forms of confidence.

Next to this, shared knowledge could make a contribution to a sense of belonging based on rights and to some sort of “post-traditional identity”, capable of linking a sensitivity for differences with feelings of responsible interdependence as opposed to feelings of frustration, resentment, hatred, etc. The dissemination of civic values – which guide social behaviour and its development, such as a sense of justice and of the public good, solidarity and social responsibility, tolerance and respect for difference, etc. – would be furthered. Feelings of satisfaction would result from leading an autonomous, decent life that is actively connected with public issues.

In the case of labour market flexibility this would mean that it needs to be geared to actually include people, to foster a sense of social justice, a sense of belonging and perceived solidarity and a possibility to construct one’s identity. Labour flexibility could, for example, contribute to a sense of citizenship if non-market work and particularly citizenship work were accepted as valuable and if – as the Danish case illustrates – no general sense of exclusion and insecurity is evoked (Madsen, 2004). “Active” labour flexibility could be the result of a process that is based on a commonly gained knowledge and mutual trust, which would lead to an overall feeling of satisfaction with the process and its outcome.<sup>3</sup>

Thus, although it is not easy to specify how a particular policy exactly affects and expresses values on a given issue, basic values of social cohesion and social justice need to be taken into account in the design and implementation of the processes of labour market flexibilisation. This is not to ignore the economic/goal rationality that often forms the basis of these processes, but to prevent negative effects on social cohesion. A fair balance between economic and social dimensions also has an advantage in creating support for labour market and employment reform and restructuring. According to Van der Heijden and Noordam (2001),<sup>4</sup> within the framework of reforms and policy change various levels can be striven for regarding:

- the level of risks;

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3. See the case of the regulation of temporary agency work in the Netherlands, as reported by Wilthagen and Houwerzijl (2005).

4. These authors identified five basic values to be considered from a labour law and social justice and cohesion perspective: (a) responsibility, (b) social security, (c) solidarity, (d) non-discrimination and (e) participation. From a tree model perspective, they have used another definition of values, in which they grouped several effects and values (Dimensions A and C) together.

- the level of protection;
- the scope of protection (which categories of persons); and
- the level of reciprocity (what can, for example, workers and employers expect from each other).

The general principle to be put forward here is to extend the level and scope of protection and reciprocity as much as possible and to reduce risk levels as much as possible. Put differently, users of the policy checklist should be called upon and stimulated to affect the level and scope of protection as little as possible in the negative sense and not to further extend levels of risk. The optimal scenario for this can be designed if flexibilisation is not considered equal to permanent segmentation and exclusion.

In the case of measures and reforms that are already in place, or in the process of implementation, one can study, apart from using a policy checklist, legislative memorandums, policy documents, minutes of debates and discussions, collective labour agreements, company or workplace regulations, etc., in order to assess the values that underlie these measures or reforms.

### *2.3. Are the methods and actions of the flexibilisation process contributing to, or at least not harming, social cohesion?*

In achieving certain goals, it is important to consider whether the methods and actions used are adequate. From a social justice and social cohesion perspective it is clear that certain methods do contribute more to certain effects/values than others, depending on the situation or issue at stake. Evidently, in order to reach social cohesion, the shared responsibility of all stakeholders is necessary.

What maybe termed “associative approaches” is the very embodiment of the idea of shared responsibility accepted at the individual level. In general terms, a number of players pursue an associative approach if they get together to define a knowledge and action framework that can be shared, specifying everyone’s roles and responsibility and taking fair account of their interests, and to monitor and assess their actions and ascertain whether the commitments undertaken have actually been honoured. The associative approach means that the players’ roles and responsibilities are defined through the development of interpersonal or inter-institutional relations based on “free and open communication”. It thus aims to create shared knowledge with a common goal and enables individuals and groups to get to know and respond to other people’s needs while deriving a benefit that is more lasting and better distributed than that obtained using a more individual approach.

Indeed, research has shown that modes of “negotiated flexibility”, using social dialogue and platforms for consultation (in which also the weak interests are heard) and interaction generally prove more favourable in attaining well-balanced outcomes than unilateral decisions and actions (Wilthagen and Tros, 2004).

This is also in line with the four major criteria that have been put forward in the theory of transitional labour markets (Schmid and Gazier, 2002), which conceptualises people's and labour markets' positive and proactive adjustment to critical life events. These criteria are:

- empowerment: empower individuals to cope with the (new) risks of social life;
- sustainable employment and income: make transitions pay;
- flexible co-ordination: establish a new balance between centralised regulation and self-organisation, more decision power to local levels;
- co-operation: stimulate local networks and public-private partnerships; the linking of resources.

However, to which degree the method should rely on self-regulation is less obvious and depends on the context. Public action generally takes the form of law, public regulation, central norms and/or fundamental rights. Private regulation can be laid down in various types of agreements, notably collective (labour) agreements and individual (employment) contracts. Finally, public-private regulation is often produced by tripartite or quadripartite bodies, issuing or concluding semi-mandatory laws/regulations, covenants, open norms, framework agreements, social pacts or declaring certain agreements generally binding.

According to Dimension B of the tree model, public action, where needed, can take (and has taken in the past)<sup>5</sup> a number of modes. We are of the opinion that these modes are also relevant to the other two co-ordination mechanisms, private and public-private regulation:

- originating actions;
- regulatory actions;
- remedial actions;
- facilitating actions.

It is not easy to decide in advance which type of method is to be used: public, private or public-private. In our opinion the actual degree of self-regulation and the degree of risks for (potential) outsiders should determine whether public or private methods and actors, or a combination of both should be given priority. It can also be indicated which specific type of action, as distinguished above, is needed and expected. Thus, the adequacy of methods generally depends on certain conditions, notably on the magnitude of risks for (potential) outsiders (see the Council's typology of risk groups) and the degree of self-regulation in the area or policy domain that is at stake.<sup>6</sup> If we combine both variables we can construct a matrix (Figure 3) that provides general clues as to the use of different methods.

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5. See the illuminating overview of the historical development of public actions for social cohesion in western Europe, p. 52 of the *Methodological guide*.

6. Of course, in reality, other very diverging factors play a role as well, such as the actual economic, social, political and cultural circumstances and environments in which a specific method for a specific goal has to be chosen.

**Figure 3 – Methods, actions, risks for outsiders and degree of self-regulation**

| Self-regulation | Risks for outsiders                                                   |                                                                   |
|-----------------|-----------------------------------------------------------------------|-------------------------------------------------------------------|
|                 | High                                                                  | Low                                                               |
| High            | Public (facilitating, remedial) and private (originating, regulatory) | Private (originating, regulatory, facilitating, remedial)         |
| Low             | Public (originating, regulatory, facilitating, remedial)              | Private (originating, regulatory, facilitating)/public (remedial) |

Again, additional use could be made of legislative memorandums, policy documents, collective labour agreements, company or workplace regulations, minutes of debates and discussions, evaluation studies, etc., in combination with a (*ex ante* or *ex post*) assessment of the degree of self-regulation and the risks for (potential) outsiders in the area.

### 3. Revisiting the Council of Europe's indicators on social cohesion

In the sections above we have shown which general questions are relevant to assess whether labour market flexibility is compatible with social cohesion as defined in terms of the tree model. Obviously, the measure should be favourable to or at least not harm the well-being in its four dimensions (Dimension A), it should foster those values, links and feelings of confidence that are favourable to social cohesion in the "life world" (Dimension C) and the method chosen to decide on and implement the measure should respect the principle of shared responsibility (Dimension B). It should also take into account actual risks and degrees of self-regulation.

However, to further operationalise the concept, which is necessary for designing a methodological tool, the Council's methodological guide goes a step further: It does not only aim to serve as a reference framework for social cohesion as a qualitative concept, it also tries to facilitate the implementation, monitoring and assessment of social cohesion action plans by giving more detailed policy tools. In Part III of the guide, so-called social indicators are developed in order to "measure" and "visualise" the impact of policy decisions on social cohesion. These indicators may be helpful to answer the question of how the compatibility of labour market flexibility with social cohesion is finally determined.

In the methodological guide (from p. 90 onwards) detailed question schedules with accompanying social indicators are laid down to provide data to measure social cohesion in four levels of analysis (general trend, detailed overall assessment, by area of life, and from the perspective of vulnerable groups).

For the purpose of elaborating a checklist on labour flexibility, we were immediately drawn to the third level of the guide. The areas “employment” and “income” developed there are most relevant for the labour market and the workforce, although we are well aware of the cross-links between these areas and other domains of life (see the model of transitional labour markets, Schmid and Gazier, 2002). Spill-over effects in the context of labour market flexibility may be found especially in the sheets on housing, education, and health and social cover.

The tables on employment and income propose a rather exhaustive list of indicators for assessing the possible reconciliation of flexibility in the labour market with social cohesion in society and could therefore be used in a policy checklist. All three dimensions of the tree model are worked through. Starting at the level of Dimension A (the leaves of the tree), the effects, questions and social indicators are enumerated about equity in the enjoyment of rights/non-discrimination, dignity and recognition, autonomy and personal development, and participation and commitment. Then the focus shifts to Dimension C (the roots of the tree), where questions about the basic components of life (values) are laid down and social indicators are given. Lastly, but not least important for policy purposes, a schedule is given on the level of Dimension B: actions and actors (method). This schedule contains an overview of the possible originating, regulatory, remedial and facilitating actions that may be initiated in the field of employment and income policies by actors such as the central government, the local authorities, and other market or non-market actors.

Although these schedules provide a clear and handy overview of relevant effects, values and methods to be applied in specific circumstances by specific actors, when striving for practical application some questions remain unanswered. As no normative criteria are given, how should different aspects of social cohesion be valued against each other? What if they are contradictory? How must priorities be set? Can dignity be traded for equity? Can a method that is not based on shared responsibility (and thus less recommendable from a social cohesion perspective) be traded for better outcomes on economic growth (and more employment)? Or on the contrary, is it worthwhile to stick to a more just process if this would mean accepting less performance on the scale of well-being? It is important that a policy checklist points to these problems as well. Identifying priority lines of action is one of the things needed.

In this respect, the first level of analysis in the methodological guide might be helpful. As stated on page 60 of the guide, the aim of this first level is to identify

the priority lines of action, by looking at general trends in society. The idea is to find an answer to the question of whether, and if so to what extent, the trend towards consolidated social cohesion is stronger than the trend towards a deterioration in social cohesion, or whether the opposite is true. For social cohesion in relation to the labour market, key indicators for a positive or negative trend are (in)equality in income distribution, the spread of perceived job insecurity, the long-term unemployment rate and social mobility. Other possible indicators involve the amount of involuntary part-time work, the proportion of fixed-term versus permanent employment and the percentage of the population that receives the minimum guaranteed income (pp. 94-95 of the guide).<sup>7</sup>

#### **4. The proposal for a policy checklist**

The Council of Europe attaches great importance to pedagogical tools in the social cohesion field as contexts and environments differ considerably from one country to another. It becomes necessary to build a consensus through bearing in mind a grid of elements that help clarify the policy contribution to social cohesion, particularly at the labour market level.

To assess the compatibility of labour market flexibilisation with social cohesion and to help and stimulate target groups to consider the various aspects of social cohesion in their planned or already implemented flexibility measures or processes, we have made a first draft of a policy checklist that could serve as an application of the Council's tree model as explained in the methodological guide.

This tool is designed first of all as a means of analysing the situation of social cohesion in order to draw up concerted strategies and action plans for reconciliation. One of its key functions – in addition to providing the ideas for action themselves – is to create a process of consultation and dialogue between the players.

The limited size of the policy checklist and the concrete indicators included hopefully foster its use by a variety of users. Evidently, the checklist could be further complemented with a number of good practices, for example, illustrating the Danish model, or the regulation of the Dutch temporary agency work sector.

For further development, one may also consider producing an electronic version of the checklist (CD-Rom or web application), which can better link the analysis framework with ideas for action and examples of good practice. Such an electronic version might even enable users to fill out a questionnaire, responding to

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7. Note that the indicators used by the European Commission within the framework of the European Employment Strategy and its guidelines also include fixed-term and part-time work (and its involuntary/voluntary aspects), although these contract forms are considered as positive indicators of flexibility and security in terms of "contractual diversity".

the indicators included in the list and would, according to a very ambitious plan, evaluate the social cohesion friendliness or “flexiconciliation degree” of the flexibilisation measure or process.

#### **Appendix – Draft policy checklist to help reconcile labour flexibility with social cohesion**

Goal: assess – ex ante or ex post – the impact of a regulatory measure on the compatibility of labour flexibility and social cohesion in its various dimensions, and help find possibilities to reconcile the two objectives.

Target groups: policy makers, governments, legislators, employers and their associations, trade unions, NGOs, supranational bodies, courts, works councils and individual workers.

##### *Part I – Method: how to use the checklist and the quality of the flexibilisation process*

This part gives an overview on how the checklist can be used to structure efforts to reconcile labour flexibility with social cohesion. It gives an overview of the types of flexibility, actors to be included and methods of regulations available. Furthermore, it underlines that social cohesion is founded on the idea of shared responsibility and what it implies for a process of labour flexibilisation.

##### *Part II – Analysing and ideas to foster the impact on individual well-being*

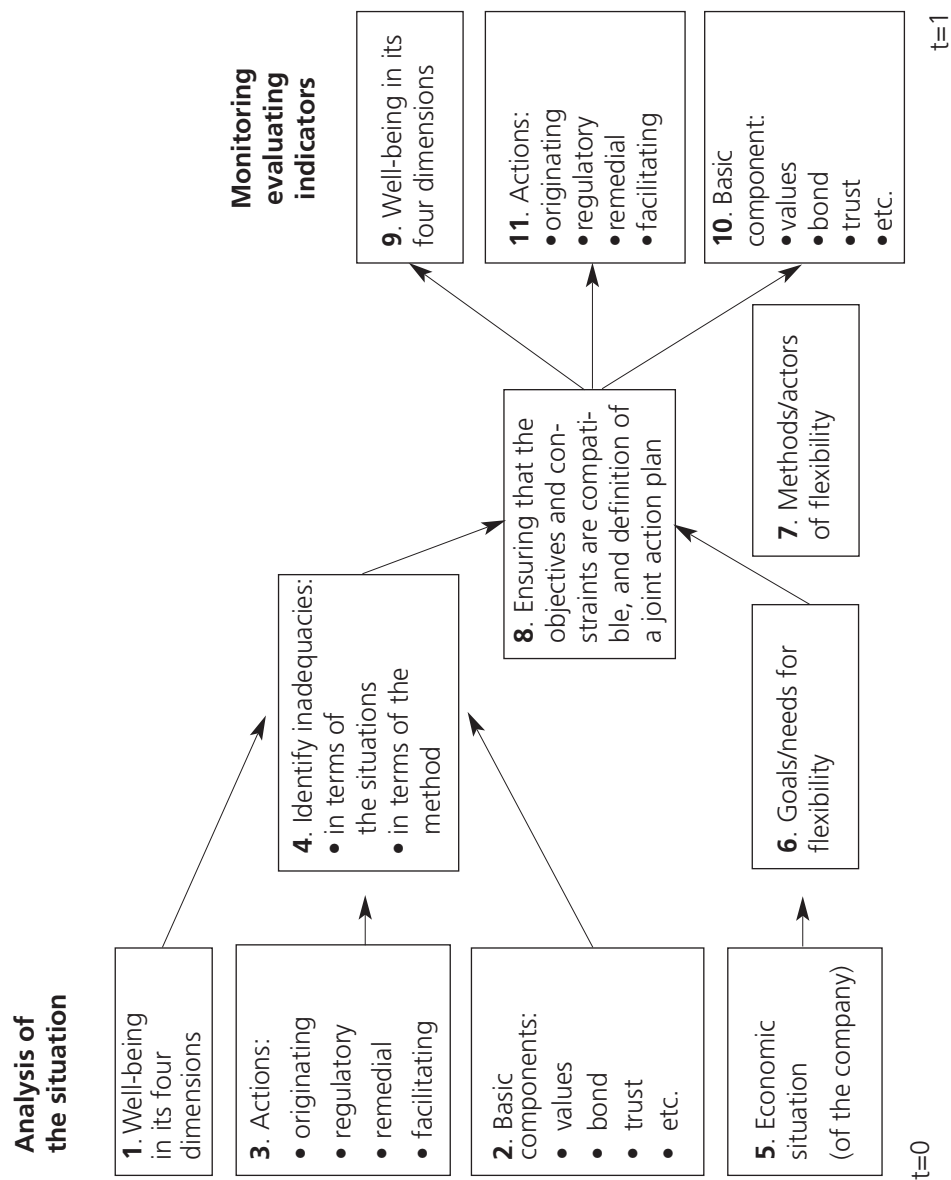
The heart of the checklist translates the four dimensions of well-being of social cohesion into the context of labour flexibility. Table 1 points in the first two columns to the various underlying aspects that need to be considered when analysing the impact of labour flexibility and that have to be taken into account when trying to reconcile it with social cohesion. For each of these aspects it points in the second column to indicators to assess them and in the third column to ideas for action and good practices. (As this is a draft version column 3 is particularly rudimentary.)

##### *Part III – Checking against the fundamental values*

Social cohesion is based on and fosters certain values that allow for and further strengthen social cohesion. Part III invites one to check which values are behind a flexibilisation measure and how those fundamental values are affected.

Part I – Method: how to use the checklist and the quality of the flexibility process

a. General framework for a concerted conceptualising and monitoring tool to reconcile the need for labour flexibility and social cohesion



The process of the policy check, as represented in the figure above, will consist of determining shortcomings and imbalances between the measures in place (or planned in an *ex ante* analysis) and the actual (foreseeable) situation with regard to well-being.

The indicators will help in a first step to identify the needs and (potential) problems of the stakeholders, notably the employees and the companies. It is by building up common knowledge for the purposes of action and in relation to the agreed objective of social cohesion that compatibilities between the positions can be identified. With the same process the requirements for knowledge become clear and these requirements will guide the search for new data and information adequate for the precise situation. In a second step, the indicators can help monitor the impact of the joint action undertaken.

The dimensions and aspects in the figure above are elaborated in a set of questions and indicators (corresponding to the block numbers), focusing on the four aspects of well-being (Part I) – equity, dignity, autonomy and participation (1) – the goals and values at stake in the process of flexibilisation (2, 5, 6), and the methods and actors involved (1, 4, 7, 8). By repeating the analysis at the onset of the flexibilisation process ( $t=0$ ) and repeating it at a further moment in time ( $t=1$ ), a dynamic approach and evaluation (9, 10, 11) is possible.

*b. Method, actors and types of regulation*

|                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Methods</b></p> <p>What is the nature of the flexibilisation measure or process?</p> <p><b>(3, 4, 7, 8)</b></p> | <ul style="list-style-type: none"> <li>• External numerical flexibilisation (relaxing dismissal protection/hiring and firing, promoting temporary work/agency work)</li> <li>• Internal numerical flexibilisation (promoting part-time work, shift work, overtime, flexitime)</li> <li>• Functional flexibilisation (promoting job rotation, job shifts, multitasking, geographical mobility)</li> <li>• Variable pay (flexible pay systems, performance pay, bonus systems, profit sharing)</li> </ul> |
|-----------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Actors</b><br><br>Actors and their entourages involved in design and implementation of flexibilisation measures or processes<br><br><br><br><br><br><br><br><br><br>Characteristics of the process | <ul style="list-style-type: none"> <li>• Legislator/parliament</li> <li>• Government</li> <li>• Employers' association (at what level?)</li> <li>• Trade unions (at what level?)</li> <li>• NGOs</li> <li>• Supranational bodies</li> <li>• Courts</li> <li>• Works councils</li> <li>• Individual employers</li> <li>• Individual employees</li> <li>• Families/households</li> </ul><br><ul style="list-style-type: none"> <li>• Consultation upfront with all stakeholders</li> <li>• Negotiation with all stakeholders</li> <li>• Joint agenda-setting</li> <li>• Joint monitoring</li> <li>• Joint evaluation</li> <li>• Joint revision of strategy in view of effects</li> </ul> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### Type of regulation

| Self-regulation | Risks for outsiders                                                   |                                                                   |
|-----------------|-----------------------------------------------------------------------|-------------------------------------------------------------------|
|                 | High                                                                  | Low                                                               |
| High            | Public (facilitating, remedial) and private (originating, regulatory) | Private (originating, regulatory, facilitating, remedial)         |
| Low             | Public (originating, regulatory, facilitating, remedial)              | Private (originating, regulatory, facilitating)/public (remedial) |

*c. Social cohesion as a process: the method of shared responsibility of all actors leading to negotiated flexibility*

As explained in the introduction, there is not one way or one type of regulation to achieve social cohesion. However, as social cohesion is not only an objective but also a process, the method of shared responsibility is crucial for achieving social cohesion.

|                                                     |                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------------------------------|----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Quality requirements of the social cohesion process | Shared responsibility of stakeholders for the well-being of everyone | <ul style="list-style-type: none"> <li>• Sharing of the well-being objective: the universal and indivisible nature of human rights and sustainable development</li> <li>• Methods of shared responsibility: citizenship, associative approach and democratic skills</li> <li>• Economy geared to the well-being of each individual and the community (ensuring that the objectives and constraints of the economy are compatible with those of citizen well-being and social cohesion)</li> </ul> |
|-----------------------------------------------------|----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Shared responsibility in the context of labour flexibility



|                        |                                                                                                                                                                                           |
|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Negotiated flexibility | <ul style="list-style-type: none"> <li>• Are all stakeholders involved?</li> <li>• Is there space for dialogue?</li> <li>• Are costs and benefits shared between stakeholders?</li> </ul> |
|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

*Part II – Analysing and ideas to foster the impact on individual well-being*

| EQUITY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Analysis of the situation t=0 and repeated for t=1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Indicators                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Ideas for action/good practice                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p><b>In remuneration/ employment conditions</b></p> <p>Do flexible workers receive the same remuneration as the core worker?</p> <p>Are those who have to be flexible compensated (in form of a risk premium)?</p> <p>Do those who benefit from flexibility participate in its costs?</p> <p>How variable is the income due to labour flexibility?</p> <p><b>In access to social protection</b></p> <p>Do flexible workers have the same entitlements to:</p> <ul style="list-style-type: none"> <li>• medical insurance</li> <li>• retirement benefits</li> <li>• unemployment insurance benefits</li> </ul> <p>as those not flexible?</p> <p><b>In the advantages and disadvantages of labour flexibility</b></p> <p>Do only certain groups bear the risk and costs of labour flexibility?</p> <p>Do only certain groups benefit from labour flexibility?</p> | <p>Salary temporary employees/salary permanent employees</p> <p>Income job changers/income job keepers</p> <p>Perception of flexibility induced change according to socio-economic status</p> <p>Coverage rate of flexible workers (temporary, agency, etc.) regarding:</p> <ul style="list-style-type: none"> <li>• medical insurance</li> <li>• retirement benefits</li> <li>• unemployment insurance benefits</li> </ul> <p>Unemployment periods</p> <p>Wage development from job to job within a (socioeconomic) sub-group</p> <p>Opportunities and chances of workers affected to make the transition (back or forward) to segments that are not affected (core workers)</p> <p>Characteristics, rights and position of workers not affected by the measure or process (core workers)</p> | <p>Initiatives to promote the employment of young people (central government)</p> <p>Mediating bodies for project fulfilment and access to solidarity credit (NGOs)</p> <p>Programmes for the occupational integration of target populations (central government)</p> <p>Support for the non-profit sector with regard to job creation (central government)</p> <p>Employment for people with disabilities (firms/market/trade unions)</p> <p>Support for victims of exclusion (NGOs)</p> <p>Family allowances and social housing (1930s)</p> <p>Social security (welfare system) (1946-80)</p> <p>Unemployment benefit and support for job market integration/employment</p> <p>Regulation of social security contributions (central government)</p> <p>Grants given to companies for the creation of jobs (central government)</p> <p>Public sector pay increases (central government)</p> <p>Arrangements for pay rises in the private sector (firms/market/trade unions)</p> <p>Credit support policies (central government)</p> <p>Difference in income before and after tax and tax concessions (central government)</p> <p>Amount of transport allowances (local authorities)</p> <p>Extension of human rights with social and economic rights (1970-80)</p> <p>Job protection legislation (central government)</p> <p>Framework agreement on seasonal work (central government)</p> |

| DIGNITY                                                                                                                                                                          |                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Analysis of the situation t=0<br>and repeated for t=1                                                                                                                            | Indicators                                                                                                                                                                                                                                                     | Ideas for action/good practice                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Job insecurity and stress affecting health</b><br><br><b>Recognition of experiences</b><br><br><b>Social acceptance of the status</b><br><br><b>Guaranteed minimum income</b> | Perceived job insecurity (probability of losing one's job)<br><br>Perception of recognition<br><br>Perception of status<br><br>Existence and level of minimum income<br><br>Transfer period and/or compensation for workers affected by the measure or process | Provision of coaching (firms/market/trade unions)<br><br>Payment of workers' wages in the event of strikes (firms/market/trade unions)<br><br>Support for ethical and solidarity-based finance (local authorities)<br><br>Risk capital associations or guarantee co-operatives (NGOs)<br><br>Existence of stress management programmes (firms/market/trade unions)<br><br>Non-contributory benefits (central government)<br><br>Guaranteed minimum income<br><br>Regulation of the guaranteed minimum income (central government)<br><br>Arrangements for raising the guaranteed minimum wage (central government)<br><br>Expansion of voluntary work (NGOs)<br><br>Definition of a minimum guaranteed wage (central government)<br><br>Legislation on the guaranteed minimum wage (central government)<br><br>Legislation on harassment at the workplace (central government)<br><br>Constitutional and legal provisions on a guaranteed minimum income (central government) |

## AUTONOMY

| Analysis of the situation t=0<br>and repeated for t=1                                                                                                                                                             | Indicators                                                                                                           | Ideas for action/good practice                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| <b>Possibility for work-life balance</b> <ul style="list-style-type: none"> <li>• Time autonomy</li> </ul>                                                                                                        | Contribution of flexibilisation measure or process to workers' preferences and needs in working life and family life | Encouragement to take risks, to set up businesses                                       |
| <b>Possibilities for career development</b> <ul style="list-style-type: none"> <li>• Access to vocational training</li> <li>• Recognition of experiences</li> <li>• Upward mobility (employment flows)</li> </ul> | Flexitime (flexible working times)                                                                                   | Public expenditure on an active employment policy (central government)                  |
| <b>Financial autonomy</b> <p>Do flexible workers or those with a temporary contract have access to banking services and credit?</p>                                                                               | Working time accounts                                                                                                | Public expenditure on a vocational training policy (central government)                 |
|                                                                                                                                                                                                                   | "Annualisation"                                                                                                      | Public information campaigns on employment policies (central government)                |
|                                                                                                                                                                                                                   | Options for leave                                                                                                    | Contribution of companies to the financing of training (firms/market/trade unions)      |
|                                                                                                                                                                                                                   | Facilities and support offered to workers affected by the measure or process                                         | Increase in the use of continuing training services by SMEs (firms/market/trade unions) |
|                                                                                                                                                                                                                   | Institutions supporting flexibility (childcare, etc.)                                                                | Incentives for self-employment (central government)                                     |
|                                                                                                                                                                                                                   | Experience-rated salary                                                                                              | Unemployed associations (NGOs)                                                          |
|                                                                                                                                                                                                                   | Annual hours of training (company, state, private)                                                                   | Tax incentives for job creation (central government)                                    |
|                                                                                                                                                                                                                   | Average time between promotions                                                                                      | Career organisation policy (firms/market/trade unions)                                  |
|                                                                                                                                                                                                                   | Banking accounts                                                                                                     | Flexibility in the arrangement of working hours (firms/market/trade unions)             |
|                                                                                                                                                                                                                   | Credit difficulties                                                                                                  | Legislation concerning on-the-job training (central government)                         |
|                                                                                                                                                                                                                   | Housing difficulties                                                                                                 | Legislation on self-employment (central government)                                     |
|                                                                                                                                                                                                                   | according to employment contract                                                                                     |                                                                                         |

| PARTICIPATION                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Analysis of the situation t=0 and repeated for t=1                                                                                                                                                                                                                                                                       | Indicators                                                                                                                                                                                                                                           | Ideas for action/good practice                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p><b>Voluntary/involuntary nature of involvement of workers in flexibilisation measure or process</b></p> <p><b>Can flexible workers participate in the decision-making process of the company?</b></p> <p><b>Do flexible workers have a voice in the whole flexibilisation process, in theory and in practice?</b></p> | <p>Trade union membership according to employment contract</p> <p>Right to found works council in temporary work agency and hosting company</p> <p>Temporary or permanent nature of involvement of workers in flexibilisation measure or process</p> | <p>Corporate social responsibility and institutionalisation of social citizenship</p> <p>Support for new collective agreements</p> <p>Participation of social partners and civil society in the development of the labour market (central government)</p> <p>Active participation in the activities of works councils (firms/market/trade unions)</p> <p>Negotiation of collective agreements in the public sector (central government)</p> <p>Decentralisation of institutional responsibilities for supporting job creation (local authorities)</p> <p>Collective bargaining between companies and trade unions (firms/market/trade unions)</p> <p>Collective agreements (firms/market/trade unions)</p> <p>Development of microcredit (NGOs)</p> <p>Right to organise and right to work (1930s)</p> <p>Right to organise (central government)</p> |

### Part III – Checking against the fundamental values

|                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Goals/values</b><br><br>Goals and possible alternatives considered for flexibilisation measure or process<br><br><b>(2, 5, 6)</b> | <ul style="list-style-type: none"> <li>• Goals pursued by flexibilisation measure or process</li> <li>• Values expressed, explicitly or implicitly in this measure or process, and references to social cohesion</li> <li>• Evidence on which efficacy and efficiency of flexibilisation measure or process is based</li> <li>• Alternative strategies considered to reach same goals</li> </ul> |
|--------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

#### Basic components of social cohesion

|                                             |                                                                                                                                                                                                                                                                   |
|---------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Bonds                                       | <b>Bonds</b> that cut across those rooted in tradition and/or economic and institutional systems                                                                                                                                                                  |
| Confidence                                  | <b>Triple dimension of confidence:</b> <ul style="list-style-type: none"> <li>• confidence in oneself and one's personal relationships</li> <li>• confidence in institutions, NGOs and companies</li> <li>• confidence in the future</li> </ul>                   |
| Collective knowledge and sense of belonging | <b>Shared knowledge</b> (of situations, everyone's roles, etc.) and <b>collective civic awareness</b> , especially a sense of multiple belonging based on rights to a "post-traditional identity" linking difference, interdependence and mutual responsibilities |
| Values                                      | <b>Civic values:</b> <ul style="list-style-type: none"> <li>• sense of justice and the common good</li> <li>• sense of solidarity and social responsibility</li> <li>• tolerance/interest in those who are different/outreach</li> </ul>                          |
| Feelings                                    | <b>Individual satisfaction</b> at leading an autonomous, dignified life and being actively involved in public activities                                                                                                                                          |

| Questions                                                                                                                      | Indicators                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. What is the satisfaction of citizens as regards their employment security and the flexibility of their employment?          | <ul style="list-style-type: none"> <li>• Satisfaction with regard to employment security</li> <li>• Satisfaction with regard to labour flexibility</li> </ul>                                                                                                                                                                                                                                      |
| 2. How do citizens perceive social differences in terms of labour flexibility and employment security?                         | <ul style="list-style-type: none"> <li>• Perception of one's own employment security compared to the average</li> <li>• Public opinion on risk distribution</li> </ul>                                                                                                                                                                                                                             |
| 3. What is the value attached to fairness and solidarity in employment security?                                               | <ul style="list-style-type: none"> <li>• Public opinion on the minimum income the state must guarantee to vulnerable people</li> <li>• Public opinion on income from capital and assets</li> </ul>                                                                                                                                                                                                 |
| 4. What is the level of citizen confidence in labour market institutions, social partners, management and employment services? | <ul style="list-style-type: none"> <li>• Level of confidence in labour market institutions</li> <li>• Confidence in social partners negotiating on one's behalf</li> <li>• Confidence in employment services and learning options to enhance possibility to stay in employment</li> <li>• Confidence in management to look for mutual beneficial solutions with their flexibility needs</li> </ul> |
| 5. What is the level of confidence in the future in terms of employment security?                                              | <ul style="list-style-type: none"> <li>• Fear of losing employment</li> <li>• Fear of staying in unemployment</li> <li>• Fear of losing control of employment characteristics and working time</li> </ul>                                                                                                                                                                                          |
| 6. What is the level of perceived solidarity?                                                                                  | <ul style="list-style-type: none"> <li>• Role of various players providing assistance for flexible workers within a job or on the way to the next one</li> </ul>                                                                                                                                                                                                                                   |

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