

Non-standard employment relations or the erosion of workers rights

Jan Cremers, *Amsterdam Institute of Advanced Labour Studies (AIAS)*, j.cremers@uva.nl

An assessment of the “exit” strategies that are proclaimed to get out of the crisis leads to serious concerns that the welfare state will be further demolished and labour laws and social security systems watered down, all in the name of economic recovery. Although several opinion makers and politicians expressed that the crisis could create a chance to reverse the disastrous economic policy agenda that still threatens the financial stability of the European monetary union the main message is nowadays to cut deficits, expenditure and wages. The effect is a continuation of the policy of unequal redistribution of income and profits. Neoclassical thoughts remain to challenge the welfare state.

In this paper I want to explore parts of my research in recent years on the erosion of workers’ rights. Europe’s more interventionist institutional arrangements, characterised by a certain degree of income redistribution and the common notion of a “European social model”, always had a positive effect on the quality of the working lives of millions of men and women in the bottom segments of the labour market. However, we may notice that these provisions and arrangements are under serious threat. The neo-liberal deregulation agenda that has dominated the European legislative procedures (and the World Bank policy) in the last decennia is not really questioned and the planned “exit” strategies will lead to a new push of policies of reduction of job and income security and wage freezes.

Europe has to return from the slow but steady dismantling of social protection and job security provisions. Otherwise it will be quite probable that two types of erosion, “working poor” on the one hand and atypical labour relations on the other hand will further accumulate at the lowest echelon of our labour markets. The result is precarious employment that encompasses forms of work involving job insecurity, low income, limited (or no) social benefits or statutory entitlements and low societal participation. Low-wage work tends to reproduce itself from generation to generation and thus limits access to good education, good health care and other basic living conditions. It contravenes the political goal of equal opportunities.

At first glance

Although the world of finance suggests that we are steadily going “back to business as usual”, the full consequences of the economic crisis have not yet arrived. If we examine the “exit” strategies that are proclaimed then there are serious concerns that the welfare state will be further demolished and labour laws and social security systems dismantled, saddling people with insecure jobs, all in the name of economic recovery. If the basic philosophy is deregulation, often proclaimed under the more popular but also misleading terms self-regulation or decentralisation (or presented as part of a fight against “red tape” and administrative burden), the result is a divergence between winners and losers. This applies first and foremost to the workers that belong to the most vulnerable groups on our markets: migrants, young people, men and especially women in precarious labour relations. Equal treatment based on “individual responsibility” and “do it yourself” in the liberal sense, is an exclusive right of those that have the possibilities and the means to shape their labour market positions or role in society. For those that stay in the dependent positions, the outcome is exploitation and marginalisation: a penetrating insight into the harrowing effects of the “free market” policy.

And although the current financial and economic crisis has created a significant loss of trust in the relationships between economic actors like banks, financial institutions, managers, and governmental institutions the political bill is surprisingly not paid by the

real “hooligans” of the free market philosophy. Recent results of parliamentary elections all over Europe show serious losses by the left or socialist parties, whilst politicians who advocate the neo-liberal vision are in a winning mood. Not exactly the expression of a will to reverse the disastrous economic policy agenda that still threatens the financial stability of the European monetary union

One of the basic elements of the socio-economic modelling of the labour markets in the EU Member states is the great diversity in the national regulatory frames, both of labour conditions and of social security and protection regimes.

This creates juridical complications in the Europe of the free market as soon as there is a cross border dimension in the market strategy of businesses. Practices that are typical and accepted in one country (because there is no rule and nothing to comply with) can be atypical in another country that has well regulated (part of) the labour market.

In the European Community of the founding fathers the debate, also in the field of social policy, was about deepening or broadening up. With the rapid enlargement in the 1980s and 1990s the answer was clear: there was no space for deepening. What started with ambitious harmonisation projects ended in procedures of soft law hoping for convergence.

At the same time the market liberalisation created new challenges that could no longer be dealt with only at national level. In the neo-liberal vision shareholders and financial investment groups had to be as free as possible to look after the best value for money. In the search for cheap labour decent labour regulation is only seen as a burdensome thing. The free provision of services and the transnational operations of the world of finance became of paramount importance and the EU social policy didn't keep pace. The result was first and foremost a national and European policy of withdrawal (“leave it to the market”) and inertia (Cremers 1995). In recent years important research has been produced that focuses on the labour market effects of this policy.

Direct labour versus non-standard employment

The post-war period, with unprecedented growth and development and ample full employment created for quite some time, especially in the OECD countries, a climate favourable for the establishment of a “standard” or “typical” employment relationship. Labour legislation and collective bargaining developed around this relationship and remained stable and straightforward. Collective agreements and direct employment relationships became important contributions to a general feeling of justice and fair treatment and build at the same time effective mechanisms for social peace. The digital revolution, the delocalisation of production throughout the world and the increasing competition between high-wage and low-wage countries have led to significant changes in the world of work. The “reform” policy, advocated by international organizations as the World Bank and the OECD, has been pursued in ways that are selective, resulting in increasingly precarious labour.

The European internal market that started as an ambitious project of macroeconomic integration became, under the influence of this strong neoliberal agenda, a wave of privatisation and deregulation. Important parts of the public sector were brought to the

market and this liberalisation was seen as identically to privatisation. The consequences in many EU Member states were not only a loss of political control over the water distribution, the energy, public transport, social housing, health care and post services, but also the erosion of citizens' and workers' rights.

In some sectors the state monopoly was transformed into a cartel of a handful of powerful global players. In other sectors the loss of collective funding led to a race to the bottom, especially on wage costs and working conditions, resulting in deskilling and decreasing motivation, poor quality and less services.

The intensified global competition, technological change and corporate restructuring have had adverse effects on workers, with corporate managers pushing to erode employment standards, thereby shifting risks away from firms and onto workers.

An employment contract is basically defined by the bond of subordination it establishes or proves between a worker and another party (or an undertaking that belongs to someone else). The worker delivers his work in the form of labour to the other party. The other party is traditionally conceived as the owner of an undertaking or business unit that engages a group of workers in the production of goods or the delivery of services.

From this perspective it was and is relatively easy to define the employment relationship and to distinguish between a contract of service (the labour relationship) and a contract for (the provision of) services. Therefore, a certain similarity existed, from the legal perspective, in the criteria formulated in the EU Member States with regard to the definition of a labour relation:

- Subordination to a user undertaking.
- Submission to orders in the performance of work.
- Integration in a (collective) scheme of planning and execution designed by others.
- Economically and socially the worker is dependent on the work done for and by an undertaking that belongs to someone else.
- Financial dependency on a (single) employer.

The last decades this basic employment pattern has started to erode.

The reform agenda, putting all emphasis on 'flexible' work patterns, was inspired by the strong growth of the low paid services sectors on the US market. The consequence in some new forms of services (health care, domestic care and the like) is a serious downgrading of occupational profiles combined with a degradation of the workers' status.

Traditional industries with large business units, plants and factories have lost their dominant position in the economy. The post-war model of undertakings with skilled and unskilled workers contributing their labour under the supervision and disciplinary control of an employer is no longer the standard model. The possibility to outsource parts of the process and the intensification of sub-contracting, driven by a strategy to reduce costs and/or by the aim to avoid direct employment of workers, have created a new play ground for all kind of (commercial) contracts for supplying services that do not fit in the classical model.

The result is not only a complete erosion of collective rules and standards, but also a distortion of competition and an output with poor quality.

In a recent publication different categories of workers with a non-standard employment relationship were distinguished (European Labour law Network 2009).

Some of these categories are worth mentioning here.

- *Temporary Agency Workers*: many countries have particular statutes or provisions regarding temporary agency workers. The degree to which the deployment of temporary workers is restricted by these regulations differs highly from country to country.
- *Home workers*: in some countries, the home worker is subject to full application of labour law. Other countries have restricted this much more in accordance with specific needs of home workers.
- *Teleworkers*: The European Framework Agreement on Telework has been implemented in various forms in the Member States, sometimes within legislation, but mostly in the form of collective agreements or other agreements between social partners. The definition of telework is slightly modified in some cases. Teleworkers are generally entitled to the same rights as regular workers in the company. Differentiations exist in certain respects, for instance regarding working hours.
- *(Short-term) casual workers*: in some countries, short-term casual workers are recognised as a specific category. The legal situation becomes even more diverse if we look at the position of *on-call workers*. Some countries recognise these categories in order to provide for exemptions from specific labour rights, due to the small proportion and/or the temporary character of their work. In other cases, special rules were created in order to protect, for instance, holiday rights.
- *Freelancers*: the work of freelancers is usually not subject to legal regulations. In practical terms, 'freelance work' is often restricted to certain sectors such as journalism and art. Normally, applicability of labour law rules is based on the assessment whether the freelancer works under the authority of an employer (and therefore has an employment contract) or not.
- *Household employees*: some countries have implemented specific legislation for this group. This usually concerns exemptions to regular labour legislation, for instance regarding working hours.
- *Family workers*: some countries explicitly recognise this group, usually providing for exemptions to regular labour legislation, mostly regarding working hours.
- *Self-employed*: the new ideology in many countries. However, the mere fact that an activity is normally or typically performed by self-employed persons does not lead to the underlying legal relationship automatically being qualified as a commercial contract. It becomes what is called "bogus" self-employment, when a person who is an employee is not classified as an employee in order to hide his or her true legal status and to avoid costs that may include taxes and social security contributions.

All in all, the picture is quite differentiated and this will not change if European Social Policy is more and more defined in terms of cost cutting and job productivity. With such

a divergence the risk of regime shopping is topical. In recent research I found first indications that there is a relationship between the existing national rules and provisions and the type of bypass used in order to evade these provisions (Cremers 2009).

Non-standard employment and the erosion of workers' rights

At 4am, workers from Pakistan, India, Afghanistan and Poland are picked up in Southampton by the minibuses, to be taken by their gangmasters to "the flowers", a 70.000sq ft packhouse, a 45-minute drive away. Their job is to sort, label and pack flowers, to be delivered to Tesco, Sainsbury and other stores around the country. The gangmasters only contribution is that they supply cheap labour, expensive housing for the workers, often random deducted from pay, sometimes with 10 or 12 people living three to a room in gangmasters-owned flats (£40 a week for rent each), and that they pay less than the minimum wage. Other charges from pay are made for transport. The gangmaster receives £7 hourly for supplying the labour; the workers are paid £3.50 an hour in cash. But who cares, illegals never complain.

In the South of the Netherlands dubious agencies, specialised in the hiring in and out of workers, lodge their workforce, people from Central and Eastern Europe happy with all the little work they've found, in holiday camps. The agency decides where and how they will be employed. Contact with the authorities is strictly forbidden.

Newcomers have to pay the agent "registration and administration fees", later on deducted from their pay. Also transport and lodging are well deducted. The agent looks after their alcohol consumption; abuse gives such a bad image. But only little persuasion is needed, because these workers are so flexible and besides that "their situation is here much better than at home" (so in fact their recruitment is an "act of charity").

In Western Europe an old, almost extinct practice is back, the day labourer standing on the corner. Agriculture and horticulture, construction, the fresh products industry and the services all have their "bus stops" for these alternative tramps. Supermarkets, parking places and strategic crossroads, railway stations and even the neighbourhood of official unemployment centres function as meeting places for this type of illegal recruiting. The famous Dutch subbies, Dutch gangmasters that spoke a bit of English and some German, acted already in a more professional way during the boom in Berlin. They ordered their British and Irish workers by the mobile phone and told them where to go for the bus that was coming. And on the worldwide web with phone numbers in Western and Eastern Europe you can now find agencies that act as go-between for your self-employed workers, with "no tax, no social security payments or other employer's obligations". The workers work hard and do not come up with questions. Work is offer for restaurants and pubs, distribution and pack houses, transport and logistics, construction and agriculture. But even the IT-sector is possible. For the delivery of the services the agency provides a monthly invoice, with no reference to labour. A commercial contract, that's all.

What is going on our labour market?

Are these marginal effects of the flexicurity agenda and the advocated social innovation that is taken place in our countries? Or are we talking about structural mismatches where the famous “investment in people” turns out to be only window-dressing?

Shifting employment

With some of these questions in mind we started in early 2006 with a group of researchers a study on undeclared labour commissioned the European social partners in construction (Cremers & Jansen 2006).

Construction is often on top of the list of sectors characterised by informal labour. The outcome of our research however, can be seen as an exemplary example of the development in different forms of undeclared labour in labour-intensive industries that depend or rely on cheap unskilled labour. In that respect the results have to be analysed in a broader perspective. The ultimate questions then are what the meaning of wage labour is and what a labour contract nowadays means.

Our starting point was that undeclared labour arises from non-compliance with legal and conventional regulations in the field of taxation and fiscal law (both income taxes and VAT), social security, labour law, collective and sectoral agreements with a generally binding character. Undeclared labour refers to forms of employment that sidestep the norms of regular employment regulations. With this definition the classical undeclared worker paid in cash but also forms of bogus self-employed or the supply of illegal and cheap (migrant) labour were included in the study.

After our first analysis we saw across Europe the same patterns emerging. As the internal market was introduced and free provision of services became the guiding principle in the business environment, two fundamental developments in recent decades have changed the landscape:

- the introduction of management contracting, leading to extensive subcontracting,
- the introduction of easier access to the status of self-employment.

Since the beginning of the 1990s the size of direct labour has shrunk. On larger sites (in civil engineering, infrastructure, utilities, and new housing developments) the trend has been for less direct employment on the part of the main contractor. Relatively small and specialised staff is now responsible for procurement and management on site; in the execution of work a chain of specialised contractors is engaged. The supply of cheap, unskilled labour has become an integral part of lower level subcontracting. Vulnerable and fraudulent labour-only subcontracting is nowadays seen as a permanent feature of the industry.

During our research we were confronted with the fact that, perhaps because of the actual political climate, in a lot of the resources consulted there is a selective perception of who the main actors are. The registered unemployed, for instance (with as a consequence social benefit fraud), are not prominently represented although they are the main target group in the majority of national measures developed. Unemployed or economically inactive persons lose access to potential customers very quickly and do not have the profit of borrowing equipment or tools from their regular employer.

We found enough evidence to conclude that in most countries:

- the highest occurrence of undeclared labour relates to work carried out by workers next to their regular job (temporary irregular moonlighting, under-registered, for their employer or as handyman on their own account).
- the status of self-employment is abused, with bogus practices by national citizens, as well as foreign “independent” or self-employed workers entering the market through labour-only subcontracting. As far as work is registered, this is limited to the minimum necessary to comply with regulatory obligations; the rest is not declared.
- dubious agencies and labour traffickers supplying cheap illegal labour mainly from abroad have returned. Accommodation and food is often provided by the agency (sometimes with deductions that would do justice to “Hilton” treatment). The position of the workers is vulnerable in many aspects (dangerous work, entirely in the hands of the trafficker, language problems). But “illegal never complain and work hard” and only little “persuasion” is needed because of their illegal status.

The opening up of the borders after enlargement has in some countries created a new type of substitution on the undeclared labour market. Self-employed workers from other EU countries nowadays offer their services for domestic repair and maintenance and for private households through advertising and word-by-mouth.

Those that depend on full time undeclared labour (foreign, illegal workers or asylum seekers) belong to the least protected categories on the labour market. They are more than willing to work hard and to work long hours. Their aim is to earn a lot over a bearable and limited period in anticipation of better days. Except for periods of extreme recession and slump, domestic citizens are no longer present in this part of the market. The majority of these workers come from outside the EU. The gang master or agency is the (only) link to the outside world. The relationship between the agencies offering the job and the workers is anything but a free agreement and the employment status is peripheral and poorly paid. This type of hiring in and out has grown since enlargement. Once there is a perspective for workers that have entered through this channel for better and more stable working conditions elsewhere, they will leave the sector.

Working poor

According to the Low-Wage Work research, one in four of those working in the most developed economies of the western hemisphere may soon be low paid and find themselves at increased risk of poverty. EU-countries, especially Germany and the UK – the Netherlands in their wake –, seem to follow in the footsteps of the US (Low-Wage Work 2008).

In the US the proportion of those working at low wages has already been stable for quite some time, at around 25 % of the working population.

Based on some 200 case studies in call centres, hospitals, retail, food processing, and catering and an economic analysis of the labour market, the research shows stable rates of low pay among employees in Denmark at 8.5 percent, France at around 12 percent, a UK rate recently stabilised close to 23 percent and rapidly growing rates in both Germany and the Netherlands, already surpassing 20 percent.

The EU's leading economy Germany is even at risk of exceeding the notoriously high rate of the US, especially taking into account the (growing) number of German self-employed with low earnings. A "low-wage worker" is anyone who earns less than two-thirds of the national median wage, according to the OECD standard definition. The measure for "median wage" is the gross hourly wage. Two major other characteristics of low-wage job (other than low wages) are low autonomy and high speed. Low-wage jobs appear to exhibit much uniformity across the European countries as they often take the form of a non-standard employment relation.

The studies illustrate another important example of communality, the noticeable increase in the intensity of competition. Low cost German retail chains compete with Dutch food retailers and put pressure on meat processing. The spread of international chains has made the hotel business very competitive. Companies respond to an intensified competition by trying to lower their unit costs and by putting pressure on wages.

The studies show higher risks for low skilled workers, part-timers, women, immigrants, young workers and a concentration in hotels, catering and retail. Moreover, with some exceptions, these jobs are found to be of persistently poor quality in all the five countries studied. The fact that some of them are not low-wage jobs is significant.

The result of the research is alarming. Discriminating and atypical contracts (food-processing, hospitals, catering, and retailing), hard physical and organisational strain, the willingness to increase productivity (food-processing, retailing, and call-centres), multi-skilling (food-processing), increasing quality norms (food-processing, hospitals, call-centres, and hotels) and the introduction of computerised technologies (food-processing, hotels, and retailing) increase the physical and psychological pressures on wage earners and consequently industrial injuries, illnesses, tiring, and stress.

In general, the authors of the "working poor" studies found that low-wage workers in the EU are still significantly better off than in the US, thanks to their social embedding through social insurance, including health care. The UK falls somewhere in between that approach and the more individual-responsibility oriented approach of the United States.

With these findings the authors confirm that Europe's more interventionist institutional arrangements in the four continental countries, characterised by a certain degree of income redistribution and the common notion of a "European social model", so far have had a positive effect on the quality of the working lives of millions of men and women in the bottom segment of our labour markets.

These provisions and arrangements are under serious threat where the financial crisis leads to a new push of neoliberal policies of deregulation, reduction of job security and wage freezes.

Precarious labour

In this context other data have to be mentioned that come up with evidence that one third of the working population is nowadays engaged in non-standard employment relations (Brinkmann 2006).

It is quite probable that both types of erosion - on the one hand “working poor” and on the other hand atypical labour relations - accumulate at the lowest echelon of our labour markets. The result is precarious employment that encompasses forms of work involving casualisation and job insecurity, low income, limited (or no) social benefits or statutory entitlements and low societal participation. These negative effects are often higher than average for women.

Within the SOLIDAR-project “Decent Work for All: A Key to Effective Industrial Relations”, case studies concerning precarious employment conditions and in particular the situation of migrants and posted workers studies were elaborated.¹

Looking in particular at sectors with higher incidences of precarious labour (construction, health and long-term care, cleaning) and more vulnerable groups (young people, undocumented migrants) in six European countries (Estonia, Germany, Lithuania, Romania, Italy, Sweden), the project partners compared the challenges that risk weakening decent work and social dialogue, like precarious working conditions and temporary agency work, at the European, national, sectoral and enterprise level.

Over the last decade a rise in the number of atypical contracts and precarious working conditions across Europe, with about 19 million working poor in Europe in 2008, took place. In recent years the burden of labour market flexibility was imposed on workers in non-standard employment relations, and especially on young people through the widespread use of atypical and temporary contracts and, as a consequence, easy lay off. Major trends which have contributed to shaping European labour markets have included the implementation of labour law reforms seeking to increase the internal and external flexibility of enterprises and administrations as well as a clear increase in labour migration within Europe - with the accession of 12 countries to the EU - and from non-EU countries.

In addition, the deepening of European economic integration has brought about new opportunities, but also generated new risks in view of the quality of work and employment, in particular for vulnerable and already marginalized groups on the labour market and in society.

Externalisation of recruitment has led to labour force intermediation that exceeds the national and European borders. Activities of agencies and recruitment providers lack the necessary cross-border licensing procedures. This hinders the control and the monitoring

¹ Published on http://www.solidar.org/Page_Generale.asp?DocID=23230&lc=3438 as *Decent Work & Industrial Relations publications* in March-June 2010.

of working conditions. Legislation has to clarify the shared responsibility and liability between agency and user firms. The perspective for legal measures and regulation is still lacking as the EU policy that gives the primacy to the free provision of services is mainly focusing on the simplification of the “business environment”.

For an increasing number of workers, employees and self-employed, non-standard employment relations have led to a partial or complete denial of social rights, non access to services, and thereby have contributed to fostering poverty and social and cultural exclusion. At the workplace the results are poor health and safety standards with higher rates of injuries and disabilities, absence of training facilities (or low participation rates) and non-compliance with equal pay and other equal treatment provisions.

The status of workers in non-standard employment relations is often a temporary status (Håkansson 2009).

These workers are seen as workers used to carry out quite simple tasks and, therefore, training needed (if any) is usually only a couple of days. This status, combined with difficulties in fully understanding the risks related to their workplace, may place them at noticeably higher danger (Mora 2010).

However, information about health and safety issues is crucial at the very beginning and training and instruction on how to carry out the work tasks in a safe and healthy way is needed. Inspecting bodies often lack the sensitivity to the needs of these workers and concentrate on issues of illegality rather than equal treatment.

Flexicurity and other ‘reform’ concepts

Although there is little evidence and the current state of knowledge and research does not support the assertion that the deregulation of our labour markets enables countries to perform better, governments and international bodies like the World Bank and the OECD tend to persist in calls to deregulate the labour market and to reform “protective” provisions. This reform includes new restrictions on employment protection such as the loosening of mandatory restrictions on dismissals or reform of unemployment and social benefits. The result is that crucial social risks are transferred away from governments and employers onto individual citizens. Even now in the crisis such a reform policy is part of the sermon, leading to a budgetary policy of cost-cutting, to be achieved at the expense of the workforce. The lowering of standards ends up in low paid, unsafe jobs and less job security. The advocated lowering of existing standards thus does not bring an end to the growing labour market “duality”; it just brings workers that still have a certain level of protection closer to those that are already in a precarious situation.

What was striking in the SOLIDAR cases was the fact that, especially in the Central and Eastern European, these reform policies are followed blind. To give just one example: the new Employment Contracts Act in Estonia that came into force on 1 July 2009. The act pinpoints the administrative burden of employers and the need for further flexibility. Accordingly notice periods for redundancy and compensation levels are reduced without any improvement of job or income security (Saharov 2010).

In countries with social security systems that provide workers with safety nets, with investment in education and other active labour market policies this policy works out completely different. Most Western European countries have a regulatory frame for their industrial relations and a longstanding tradition of institutional partnership that guarantee (to a certain degree) that employment policy reforms are negotiated tripartite and, therefore, the modelling of this policy is probably more “counterbalanced”. Nevertheless, the produced case studies demonstrate that “reform” concepts from a drawing table, based on (theoretical and political) ideas and notions, can work out very negative for workers’ rights if they are simply copied in countries where the preconditions for the functioning of these concepts are not fulfilled.

The European Commission and the Council of Ministers reaffirmed in 2009 their belief in the so-called “flexicurity” concept. Over a period of ten years this concept has become one of the core items in the European labour market debates. It has been widely discussed as a possible new approach to improve labour market performance and combining economic and social objectives. The concept of flexicurity (introduced by Wilthagen in 1998) is used to encapsulate a dual imperative of allowing the development of flexible employment while guaranteeing a satisfactory level of security for the workers concerned. Compared to the dominant policy of the early 1990s that argued for extensive deregulation and flexibilisation of the labour market it has added positive elements to the debate, in particular by providing a useful analytical tool.

It has refuted some neoclassical assumption that, by and large, all forms of employee protection and social security interfere negatively with the economic growth and employment creation. The neoclassical theory always had serious problems to cope with the positive functioning of some regulated markets (in Austria, the Nordic countries, the Netherlands) that, with a more balanced economic and social agenda and strong social partnership, managed to improve their labour markets.

In theory the flexicurity agenda places greater weight on flexibility in labour markets and makes social protection systems more responsive. The flexicurity approach aims to overcome the traditional contraposition of flexibility and security. Inherent in the term is that more labour market flexibility does not necessarily mean less security and that more security does not necessarily limit flexibility. In this respect it is almost a logical follow-up of the active labour market policies that were promoted in the early 1990s as a result of the positive economic performance of the Nordic countries.

But how does this work in practice and can it lead to a strategy to solve labour market problems? In the debate on flexicurity, it is especially important to look beyond the labour market emphasis in order not to lose sight of the solidarity function of social protection. The concept of flexicurity appears ill defined and highly ambiguous concerning its role in informing policy. Often, flexicurity proponents explicitly argue that this is a deliberate choice that strengthens the inclusive character of the flexicurity approach, as well as its applicability to diverse empirical situations.

Too often the flexibility agenda is introduced without guaranteeing income security. Where modern social security systems are concerned, governments remain vague and

ambiguous, arguing that good unemployment benefit systems are necessary to offset negative income consequences during job transfers, but also that unemployment benefits may have a negative effect on the intensity of job search activities and may reduce financial incentives to accept work. Flexicurity then becomes the “old” agenda of giving business the flexibility to do easy and cheap firing. This is the policy enabling unscrupulous practices to employers to treat labour as a mere commodity, allowing them the freedom to fire workers at no or low cost. This is the damaging potential in the flexibility agenda with no flanking policies developed. On the basis of the recent debate in Europe, we can ask ourselves what the preconditions are for sound flexicurity.

In the recent financial crisis, those countries that survived mostly have stronger regulatory frames, of labour law and collective agreements, in which workers are protected and treated as stakeholders that keep the company in good shape. These regulatory frames are perhaps costly, but they serve as guarantee and as an anti-cyclical instrument in times of crisis.

European Social Policy

In its Green Paper on Modernising Labour Law to Meet the Challenges of the 21st Century (EC 2006) the European Commission admitted that the introduction and proliferation of "atypical" employment contracts in most member countries has tended to aggravate labour market segmentation and to reduce the security of the most vulnerable and disadvantaged workers. The Commission further signalled an enormous casualisation of employment in Europe that has taken place:

Fixed term contracts, part-time contracts, on-call contracts, zero-hour contracts, contracts for workers hired through temporary employment agencies, freelance contracts, etc., have become an established feature of European labour markets. The share of total employment taken up by those engaged on working arrangements differing from the standard contractual model as well as those in self-employment has increased since 2001 from over 36% in 2001 to almost 40% of the EU-25 workforce in 2005. Part-time employment, as a percentage of total employment, has increased from 13% of total employment to 18% in the last 15 years. It has accounted for a larger contribution (around 60%) to employment creation after 2000 than full time standard employment. Part-time working remains predominantly a feature of female employment – with nearly one-third of women in employment having a part-time job compared with only 7% of men. Fixed-term employment has increased as a percentage of total employment from 12% in 1998 to over 14% in 2005 in the EU-25.

This casualisation has had victims: the Commission acknowledges that *there is evidence of some detrimental effects associated with the increasing diversity of working arrangements. There is a risk that part of the workforce gets trapped in a succession of short-term, low quality jobs with inadequate social protection leaving them in a vulnerable position.*

This vulnerable position has different dimensions: risk of poverty, lack of social protection, unemployment and absence of job security, ending in social exclusion.

The European social agenda, however, is still too much dominated by deregulation and the fight against “red tape”. Welfare is only defined in terms of GDP: the quality of life, good health and all other forms of ‘soft’ values do not matter. Flexicurity and employability are part of a unilateral political discourse that brings serious risks of a further erosion of the labour relationship. Whilst the artificial world of derivatives and other speculative vehicles is hardly questioned, the old-fashioned world of decent, direct labour is constantly under fire.

Deterioration of working conditions and job insecurity are no way out of the crisis.

The studies with regard to the appearance of the ‘working poor’, first in the US, later also in the EU, have demonstrated the bankruptcy of the strategy of welfare dismantling and deregulation. The ability to quickly find a job on the labour market is not enough and the focus on adaptability to the needs of the labour market in order to increase employment rates without taking into account the quality of the job and quality of life in general leads to atypical work forms. Low-wage work tends to reproduce itself from generation to generation and thus limits access to good education, good health care and other basic living conditions.

From a political point of view, this leads to the conclusion that Europe has to return from the slow but steady dismantling of social insurance and other social protection provisions. Otherwise the price of erosion of income security and job quality as a consequence of intensified competition will be very low incomes and a poor standard of living for a meaningful length of time. Low-wage work tends to reproduce itself from generation to generation and thus limits access to good education, good health care and other basic living conditions. It contravenes the political goal of equal treatment and opportunities.

What we need is a policy of “scaling up”, a campaign to promote collective bargaining and quality of work, to avoid erosion of social security provisions, and finally to strengthen the workers’ voice. The real question is whether the regulatory frame of labour legislation and collective bargaining is solid enough to promote stable jobs and contracts and to prevent the emergence of a casual workforce moving from one short-term contract into another, promoting the precariousness in the labour market and not the security needed to face challenges in a positive and constructive way.

Time for a high level group of independent stakeholders on social progress

In recent years the EU legislation has been assessed from the perspective of the “business environment” (like for instance by the Stoiber-deregulation committee). No such assessment has been developed from the social perspective. It is time to analyse the different EU policy areas related to the introduction of the internal market and to make an inventory of its social consequences. Therefore, my proposal to install a high level group for cross-sectional mapping of the EU policies.

Its task is to advise the European Commission on the development of an integral and cross-sectional action plan on improving the social dimension in the EU, as inspired by article 2.3 of the Lisbon Treaty where it is said that the Union shall: “work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment”.

Such a High Level Group should get the task to assess the overall “acquis communautaire” on its social consequences. The challenge for the group is to elaborate a system of integral mapping of the main areas of the EU policy (internal market, company law, external relations, competition, economic and monetary affairs) with regard to the contribution delivered to social progress.

The group has to draw operational conclusions and recommendations to the Commission on what should follow in terms of “socializing” existing Community legislation.

The group will also examine how EU requirements have been transposed into national legislation in order to identify “hindering or non-intended effects or barriers” from European legislation and their implementation at national level.

The Members of the Group should include the leaders of several bodies charged with labour market issues at Member State level, representatives from both sides of the industry, as well as social NGO’s, environmental and consumer organisations.

Such an analysis will make it possible to put **a social costs tag** on the basic parts of the internal market rules and provisions and provide useful ideas for proposing subsequent reductions of negative consequences.

References.

- Brinkmann U. et al (2006) *Prekäre Arbeit*, Friedrich-Ebert-Stiftung, Bonn.
- Cremers, J (1995) *Crisis in Socio-political Thinking in Europe*, CLR-News 2-1995, Brussels.
- Cremers, J and J. Janssen (2006) *Shifting Employment*, CLR-Studies 5, i-Books, www.antenna.nl/i-books
- Cremers, J (2009) *Changing employment patterns and collective bargaining*, International Journal of Labour Research, 2009. Vol. 1, nr 2. Geneva.
- European Commission (2006) *Green Paper on Modernising Labour Law to Meet the Challenges of the 21st Century*, Brussels.
- European Labour Law Network (2009) *Characteristics of the Employment Relationship*, Thematic Report October 2009, <http://www.labourlawnetwork.eu/>
- Håkansson, K et al (2009) *Representation of Agency Workers*, Göteborg. http://www.av.gu.se/pagaende_fou-projekt/representation_of_agency_workers/
- Mora, M (2010) *Building decent jobs for migrant workers*, SOLIDAR, Brussels, www.solidar.org
- Saharov, J and J. Morozov (2010) *Employments Contracts Act: is flexicurity doing its job?* SOLIDAR, Brussels, www.solidar.org
- Studies on Low-Wage Work (2008) *Case Studies of Job Quality in Advanced Economies* (Denmark, France, Germany, the United Kingdom and the Netherlands), Russell Sage Foundation, New York.
 - *Low-Wage Work in Denmark* – N. Westergaard-Nielsen (editor),
 - *Low-Wage Work in France* – È. Caroli, J. Gautié (editors),
 - *Low-Wage Work in Germany* – G. Bosch, C. Weinkopf (editors),
 - *Low-Wage Work in the UK* – C. Lloyd, G. Mason, K. Mayhew (editors),
 - *Low-Wage Work in the Netherlands* – W. Salverda, M. van Klaveren, M. van der Meer (editors).