

Briefing Paper #23

Non-standard employment relations or the erosion of workers' rights

By Jan Cremers



solidar

TABLE OF CONTENTS

1. The crisis and what happened before	1
2. The business environment	1
3. Employment patterns	2
4. Externalisation of recruitment	4
5. Direct labour vs non-standard employment	5
6. The new service provider	7
7. Flexicurity and other reform concepts	8
8. First conclusions	9

About the author

Jan Cremers has a degree in sociology of labour with a focus on the sociology of industrial relations from the Economic University Brabant, Tilburg, The Netherlands. He has worked as trade unionist and researcher. Between 1988 and 1999 he was General Secretary of the European Federation of Building and Woodworkers and a member of the management committee of the ETUC and ETUI, Brussels. From 2000 to 2007 he served as General Director of the GBIO, the Dutch National Institute for Works Council Training. In 2008 and 2009 he was a Member of the European Parliament and member of the Employment and Social Affairs Committee. Since 1991 he is initiator and legal representative of the European Institute for Construction Labour Research (CLR), main editor (since 1994) of the quarterly CLR-news. More information: <http://www.uva-aias.net/cpages/staff/1223>

In the context of this project, Jan Cremers chaired the Advisory Group on Decent Work and Quality Jobs in Europe. It is composed of representatives of relevant organisation such as ETUC, ETUI, EPSU, ILO, OSE, FES, HBS as well as the European Commission's DG Employment, Social Affairs and Equal Opportunities to provide expertise, build bridges between civil society organisations and trade unions and facilitate contacts with relevant stakeholders at the national and European level.

About the project

"Decent Work for All: A Key for Effective Industrial Relations" is a one-year project which aims to produce recommendations on how to improve working conditions around Europe in sectors with higher incidences of precarious working conditions (ie construction, health and long-term care) and more vulnerable groups (ie youth, undocumented migrants) through coordinated efforts by governments, employers and trade unions in the framework of social dialogue. It also looks into the role of social partners in fighting precarious labour and promoting decent work and quality jobs.

Responsible Editor: Conny Reuter

SOLIDAR is a European network of 52 NGOs working to advance social justice in Europe and worldwide.

SOLIDAR lobbies the EU and international institutions in three primary areas: social affairs, international cooperation and education.

© SOLIDAR
Published May 2010

WWW.SOLIDAR.ORG

Front cover images (right to left):

© FOS, Strike in Namibia

© LegaCoopBund, Independant

Photo from Soweto

Photo of Social worker with lady

1. THE CRISIS AND WHAT HAPPENED BEFORE

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.

In the neo-liberal vision shareholders and financial investment groups were free to look after the best value for money. Stock options and bonuses brought management in the camp of the short term cashing. In practice shareholders and management could leave after the money was cashed. The neo-liberal live became anything but a fairytale: the captains had long left before the ship sank.

Workers don't have this free choice, notwithstanding the ideology of a labour market with a supply side of actors that can come and go with their offer. Labour is not a commodity and as a consequence workers stay in office or get fired.

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. So who is paying the crisis?

In an effort to keep "the credit flow to the economy" massive state support for the banking sector was mobilised, but at the end of the day banking profits (and bonuses) stayed as high as before the crisis and Europe is "rewarding the speculators and boosting their profits".¹ The effect is that the policy of unequal redistribution of income and profits goes on. Neoclassical thought continues to challenge the welfare state approach.

In that respect the crisis is neither a watershed nor a turning point.

1 Ronald Janssen, *Greecebashing is hiding the obvious: monetary union urgently needs economic union*, Global Labour Column, Number 12, February 2010.

2. THE BUSINESS ENVIRONMENT

For quite some time the general opinion was that the post-war period, with unprecedented growth and development and ample full employment, especially in Europe, had created a climate that led to 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. Since then there have been significant changes in the world of work, largely due to the digital revolution, the delocalization of production throughout the world and the increasing competition between high-wage and low-wage countries. "Flexibility" as part of 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 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.²

Under the influence of a strong neoliberal agenda the European internal market that started as an ambitious project of macroeconomic integration became a wave of privatisation and deregulation.

Without a broad societal and political debate about the basic collective provisions that have to be guaranteed in our welfare states important parts of the public sector were brought to the market. Liberalisation was seen as identically to privatisation. The consequences in many EU Member states was 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.³ In some sectors the state monopoly was transformed into a cartel of a

2 John Evans, Euan Gibb, *Moving from precarious employment to decent work*, ILO, GURN, 2009

3 In a publication called "De ijzeren wet van de privatisering" (Tijdschrift voor Arbeid en Participatie, Utrecht, 2003) I spoke about "the iron law of privatisation".

handful of powerful global players. In other sectors the loss of collective funding lead 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 engagement and involvement of the different stakeholders within our companies has thus completely shifted in the last two decades.

- The introduction of **free movement** principles in the European Union has created an attractive open market for businesses.

The introduction of the free market principles (both in the EU and related to the WTO) brought a remarkable change, although the formal national implementation of the EU procurement rules was and is still poor and incomplete. Since the early 1990s company management of the main contractors started to define territorial ambitions in European or global terms. The aim was and is to become a European leader and to compete at European scale. This created a new wave of mergers and takeover. Along with the removal of the internal borders in Europe, the Member States and the European Commission started to work out an unrivalled deregulation agenda. At the start there was at least lip service to a corporate governance model with a well-balanced division of power between the different stakeholders. Capital owners, management and labour cooperated in that “traditional” model in a productive environment and kept the real economy going. As a result of a neoliberal agenda the engagement and involvement of the different stakeholders within a company vanish or are seen as old-fashioned.

- **Globalisation** of an important part of the business environment has brought spectacular takeovers, fusions, mergers and splitting ups, and financial market liberalisation has created a global field for profit.

A key question in this development is nowadays where and in whose hands the power centre lies in a company as the connection between the ownership relations and the management structure has been unloosened. Activities of financial investors and groups of activist shareholders have further separated ownership from the risks taken. Modern management that is job-hopping to the places with the best

bonuses has replaced the classical entrepreneur on top of the firm. The board of directors, the supervisory board or council of commissioners, site and country management, works councils, trade unions and shareholders are part of a power struggle of corporate control that leads them even into the courtroom. The interaction inside the companies between capital owners, management, corporate control, workers’ representatives and other stakeholders diverges within the different market strategies. The results can be changing coalitions and a great variety of opportunities/limits for worker’s participation in decision-making processes.

- On **the operational side** a clear divergence occurs, with on top of the production chain a concentration on core business and for the execution outsourcing and externalisation to dependent services, supply industries and subcontractors.

This process of outsourcing and dependent subcontracting is sometimes becoming an aim in itself (leading to “cost reduction” by minimising labour costs) even if there are no objective economic reasons and the restructuring as such does not necessarily implies layoffs. However, in many sectors of the economy across the EU large enterprises dominate the scenery, with many SMEs being dependent on them. This means that the restructuring of larger companies has potentially a much greater effect on employment than indicated by the direct job losses.

3. EMPLOYMENT PATTERNS

In its Green Paper on Modernising Labour Law to Meet the Challenges of the 21st Century (2006) the European Commission had to admit 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 signals 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.

According to 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.⁴ In the US the

4 *Low-Wage Work* (in Denmark, France, Germany, the United Kingdom and the Netherlands) Case Studies of Job Quality in Advanced Economies. Series of 5 books, 2008, Russell Sage Foundation, New York. Introduction for each book by Robert Solow.

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 this context other data that come up with evidence that one third of the working population is nowadays engaged in non-standard employment relations have to be mentioned.⁵ 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 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.

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.

However, we may notice now that 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.

4. EXTERNALISATION OF RECRUITMENT

The French sociologist Nicolas Jounin has written several interesting articles based on his own research on construction sites. In February 2006 he delivered his thesis in a 600 pages document. In that document he reports and analyses how work is more and more seen as a good that can be separated from the individual worker. His participation as a temporary apprentice building worker on several sites in the Paris’ area brought him to the conclusion that it is impossible to view work as a regular product; workers cannot be interchangeable suppliers: ‘The purely contractual dimension of wage earning always comes with the granting of a status, even an implicit one. That status determines the labour force supply, the quality of work as well as the loyalty of workers’.⁶

He signals that the status granted to workers in the building trades is not even and that the variety of status increases as a result of the reduction of general guarantees: workers “appear” or “disappear” as persons according to the conditions of production. Jounin applies these observations to notions of ethnicity and discrimination. Outsourcing and flexibility contribute to a division between those (workers) in the centre and those at the periphery. But even the workers in the centre are confronted with the threat of precarity. Outsourcing leads to precarious work sites and the basic solidarity stemming from the direct link between the (ownership of the) workplace and the employment relation is vanishing. In his theory he partly applies the terminology of dependency theory, a body of social sciences theories about developed and developing countries, developed by Samir Amin and André Gunder Frank among others, based on the notion that there is a centre of wealthy states and a periphery of poor, underdeveloped states.

Subcontracting as such does not necessarily lead to a lowering of working conditions and specialised subcontracting can be part of a logical division of labour. But, after the legal introduction of the use of temporary work agencies (for a long time forbidden in French construction) outsourcing in construction takes

5 U. Brinkmann et al, *Prekäre Arbeit*, Friedrich-Ebert-Stiftung, Bonn, 2006

6 N. Jounin, *Loyautés Incertaines – Les Travailleurs du Bâtiment entre Discrimination et Précarité*, University of Paris 7, 2006.

the form of labour only subcontracting (the return of the 'marchandage', a stable supply of precarious labour). The extensive use of subcontracting has led to a small, but powerful group of general contractors that wins tenders, manages the sites and has its logos on it. Professions and activities with high added value (conception, finance, and concessions) are incorporated and performed in-company. For the execution on site these contractors are no longer present with their workforce. They have externalised the discontinuity and uncertainty of temporary, labour-intensive activities and all the simple and repetitive work is handed over to subcontractors and agency workers. The traditional subcontracting, through a stable and cooperative division of labour in the production process, has changed to a type of outsourcing that is much more cost driven.

The lowest echelon of temporary agency workers, mostly immigrants, does not figure in official workers' statistics: they are seen as part of the 'service providers' or simply ignored because of the irregular character of their work. These workers are not represented at all. Labour inspection has more and more tasks to fulfil and the interests of workers in vulnerable situations have no priority. Labour law is only applied for a hard core of regular workers. Representation in small subcontracting firms and agencies is poorly developed. All depends on the capacity of the workers' representatives at the top of the chain to look after interest beyond the borders of the main contractor. Trade union action so far has been dominated by the defence of direct labour and campaigns against outsourcing. Less has been done in favour of those that stand outside. The basis for public and collective action is therefore vanishing. The result is individual escape from poor conditions: absenteeism, sabotage, loss of know-how, departure.

5. DIRECT LABOUR VERSUS NON-STANDARD EMPLOYMENT

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.

In this situation 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. Several authors come up with three main influences for the development of other patterns of work relationships: the rising level of employee skills and qualifications, the increasing pressure of cost cutting competition on more open markets and the ever speedier evolution on technical progress. Also mentioned is the entry of (married) women on the labour market.⁷

What probably has had more impact however is the strong growth of the low paid services sectors on our markets. The job growth in some new forms of services (health care, domestic care and the like) is often wrongly seen as a

7 A. Supiot, *Beyond Employment. Changes in Work and the Future of Labour Law in Europe*, Oxford University Press, 2001.

growth of occupational profiles that can be qualified as unskilled or semi-skilled. The consequence in these sectors is a serious downgrading combined with a degradation of the workers' status.

Next to a strong decrease of the agricultural sector the traditional industries with large business units, plants and factories have lost their dominant position in the economy. The traditional 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.⁸

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. Some of these categories are worth mentioning here.⁹

- *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 divers 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.

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.¹⁰

8 J. Cremers, *Changing employment patterns and collective bargaining*, *International Journal of Labour Research*, 2009. Vol. 1, nr 2.

9 European Network of Legal Experts in the field of Labour Law, *Characteristics of the Employment Relationship*, Thematic Report October 2009, dealing with both individual and collective rights/aspects.

10 See footnote 8.

6. THE NEW SERVICE PROVIDER

The ideology of self-employment as a type of entrepreneurship that creates jobs and wealth has recently found many supporters. This development is praised because it creates a flexible and innovative pool of qualified independent professionals with high vocational standards working in sectors that require a high level of expertise and craftsmanship. But also in this game there are winners and losers. And we should not (only) look at the winners.

Bogus self-employment, also known as disguised employment, occurs when a person who is an employee is not classed 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. With an increasing pressure of competition and under the influence of the liberalisation of the market (prominently starting with the Thatcher reform in the UK) self-employment was reintroduced as a strategy to evade labour regulations and other statutory obligations in labour intensive sectors (and workers rights laid down in collective agreements) and a method to reduce costs in traditional labour intensive industries (as is subcontracting and outsourcing). Bogus self-employment has two forms: by giving the employment relationship the appearance of a relationship with a different legal (commercial) nature, or by repeatedly renewing contracts in order to avoid giving the employee the rights and benefits of regular employees. The creation of an open market that offers free provision of services, functioning in a situation with Member States having different and divergent regulatory frames for an employment contract and for a contract for (the provision of) services, has made it possible to promote self-employed as service providers.

Deregulation made it possible to become a self-employed from one day to another.

At the beginning this was still seen as an “English disease”, a mistake or an error that could happen on construction sites (up to 60% of the workers on UK-sites). The feeling was that the workers involved were first and for all employees who were engaged as self-employed for tax and social security reasons.

As a consequence foreign workers are nowadays hired in (through all kind of agencies)

not as workers but as ‘service providers’. The free provision of services combined with an easy access to the status of self-employed, stimulated by most governments because it opens the door to other national markets, is abused. The person engaged is not contracted because he or she delivers with his independent work a special service for his own account. With an invoice cheap labour can be provided without compliance to the national labour standards.

The workers involved are deprived and excluded from the protection afforded by labour law and collective agreements. The effect is a destabilisation of the labour market and distortion of competition.

Against the background of the differences between existing national regulatory frames, better said between countries that have a clear regulation and countries that have nothing to comply with, free provision of services is an open invitation to circumvent established social standards and labour conditions in sectors dominated by unskilled and casualised workers and in branches with serious labour shortages. In the short run this contributes to the economy. In the long run it creates divergences on the labour market instead of solving problems and bottle-necks. The lower echelon of these self-employed “service providers” competes with the vulnerable groups already present on the labour market. In that respect precarious labour has intensified and the position of those that have to compete for low-skilled work has weakened. In certain regions unemployment among young people, especially the second or third generation immigrants, stays high as it is easier to hire willing foreign self-employed. With investment in vocational training being absent the impact of this type of labour migration will work out negative.

7. 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.

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.

From the side of the trade unions there is great distrust in the flexicurity agenda because of the instrumental use by conservative and neoliberal politicians.

The ETUC is very critical and argues that business in Europe already enjoys high adaptability, that the European economy is already flexible and that job creation must have the upper hand over job destruction. The ETUC identifies the prevalence of precarious employment and excessive flexibility as key problems and puts forward the improvement of the quality of jobs as a key objective. Like the European Parliament, it argues for employment security as a complement rather than an alternative to job security, for open-ended contracts as the general rule and for upgrading the rights of atypical workers. Where labour market policies are concerned, the ETUC argues for a high level of benefits, combined with active labour market policies, as well as for

including groups presently not covered in social security schemes. Finally, the ETUC argues for the integration of flexicurity policy with growth and employment creation-oriented macroeconomic policy, given that flexicurity by itself does not have employment-creating capacities.

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.

8. FIRST CONCLUSIONS

In the SOLIDAR cases we found great diversity in the national regulatory frames, both of labour conditions and of social security and protection.

This creates juridical complications in the Europe of the free market; 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 (parts of) the labour market.

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.

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 for the most vulnerable and disadvantaged citizens.

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 opportunity.

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. What we need is ‘scaling up’, a campaign to promote collective bargaining, to promote social relations, to avoid erosion of social provisions, and finally to strengthen the workers’ voice.