

**Abstract** - *The study, basing on a multidisciplinary literature, considers flexicurity as any balance between flexibility and security and, therefore, proposes ordering any set of contracts, providing the same balance and with the same regulatory framework, in “communities”. It is assumed, therefore, that communities can differ either in terms of a “protective” trade-off, where the differential is not a surrogate measure of security, or in terms of an economic trade-off, where it is met by the provision of social insurance or security. After identifying from ILO, EU and constitutional sources the foundation of the “incompressibility” of rights which guarantee decent work, the paper likens decent work to a public good of general interest, in the same way as laws generally recognize the natural environment. On the basis of this comparative axiom, the paper proposes considering the dispersion of security produced by undeclared work as “un-decent” work and, therefore, as a form of “pollution”. Because an environment can be little or very polluted, the paper proposes considering as social pollution any form, even legal, of security leakage - such as that induced by the precarious and atypical jobs. In this way, each community expresses a degree of social participation in environmental pollution: from the maximum produced by undeclared work to the minimum produced by labour standard. The adopted economic approach allows defining this pollution as a negative externality and, therefore, refer to its contrast in terms of internalization. Among the techniques of internalization, the preferred one is the Pigovian tax, because it can overcome the difficulties associated with the identification of taxable income in the undeclared work and in the informal sector. In this way, it is believed that on one hand you lose your interest in hiding most of the black job. On the other hand, a mechanism would be enforced that forces polluters to contribute to the financing of the security needed to address the pollution created. Because of the adopted ordering of communities, this positive effect would also impact on precarious forms of employment and atypical work in proportion to the security dispersed.*

## 1. PREFACE: METHOD OF INVESTIGATION AND EPISTEMOLOGICAL DISCLAIMER.\*

This work poses two key questions: the first is how to order forms of protection; the second is how to overcome the security trade-off between forms of protection (hereafter referred to as flexicurity trade-offs).

We will try to answer these questions in a heterodox manner based on an economic approach. It is therefore necessary to provide a methodological premise and make an epistemological clarification.

The premise of the method also forms part of the general subject of this conference, Pressing Problems in the Law and Legal Education, as it has been inspired by the author’s experience teaching labour law

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## Flexicurity as a measuring leakage protection of workers: between “social pollution” and “total security”

di  
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*Was not the labour problem the same everywhere?  
(G. Orwell, Animal farm, August 17, 1945)*

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and social security in the economics faculty of his university. This opened up an on-going comparison with a universe that is just beginning and for a long time was very distant from his own; more than the counter opposing methodological, epistemological and ideological discrepancies with his economist colleagues, and the consequent irreconcilable diatribes on the primacy of law over economy or vice versa, it was the necessity of making the comparison with students and the necessity of finding a shared channel of communication that stimulated a dialogical approach with these sciences. Dialogue, as per its Greek etymology *διαλογος* (through and discourse), produced the intended effect on both interlocutors through the legal discourse of the teacher and the economic discourse of the objections and the *forma mentis* of the student.

In truth, the fact that it produced an effect on the

teacher is evidenced by his altered approach to teaching and studying law. Obviously it is only the teacher's aspiration for it to produce a positive effect on the students! It can at least be hoped that it has instilled in the economics students – and this is the most important thing – the awareness that the law is not subservient to the best possible functioning of the market, and that, especially when it is relative to the constitutional standards, i.e. the founding principles of a community, this cannot be changed *ad libitum* if the economic model does not produce the desired results, even if the constitutional standards themselves are preventing them from being achieved<sup>1</sup>.

Thus, without foregoing the role of the legal expert and his methods, the use of an economic lexicon and conceptual framework as a term of comparison meant that the teaching of law did not – as sometimes happens – remain an external body added to economics training for students or a mere addendum to it; it also meant that the economics students' economic objections were not lost on their law teacher.

With this premise, assuming that the performative value of the social model hinges on constitutional standards and not the economic model, it is possible to use the perspectives and cultural armoury of economics to carry out our analysis. Is this a betrayal of the legal method? Is it an epistemological stretch? Whether it is or not depends both on the role of the interpreter and the use of the perspective. In our opinion, a legal expert who wants to understand the real, empirical effects of the legal system by using economic tools does not violate his or her status, even if these effects provide the starting point for the legal investigation; this also applies when economic observations are applied to the legal system<sup>2</sup>.

<sup>1</sup>B. Hepple, *Diritto del lavoro e crisi economica: lezioni della storia europea*, in *Giorn. dir. lav. rel. ind.*, 2009, 391 ss.; A. Lyon-Caen, V. Champeil-Desplats (a cura di), *Services publics et droits fondamentaux dans la construction européenne*, Dalloz, Paris, 2001; G. Esping-Andersen, *Fondamenti sociali delle economie post-industriali*, il Mulino, Bologna, 2000; A. Giddens, *Il mondo che cambia*, il Mulino, Bologna, 2000; U. Beck, *La Società del rischio*, Carocci, Roma, 2000.

<sup>2</sup>Cfr. S. Deakin, F. Wilkinson, *Il diritto del lavoro e la teoria economica: una rivisitazione*, in *Giorn. dir. lav. rel. ind.*, 1999, 587 ss.; R. Del Punta, *L'economia e le ragioni del diritto del lavoro*, *ivi*, 2001, 3 ss.; U. Romagnoli, *Divagazioni sul rapporto tra economia e diritto del lavoro*, in *Lav. dir.*, 2005, 527 ss.; P. Ichino, *Il dialogo tra economia e diritto del lavoro*, in *Riv. it. dir. lav.*, 2001, 165 ss.; R. Pessi, *Economia e diritto del lavoro*, in *Arg. dir. lav.*, 2006,

We will therefore start from the assumption held by many economists that “economics alone cannot determine the best way to balance the goals of efficiency and equity. This issue involves political philosophy as well as economics. As such, economics' role is to ‘shed light on the trade-offs that society faces, just to help us avoid policies that sacrifice efficiency without any benefits in terms of equity’, rather than suggest policy. Indeed, ‘equity, like beauty, is in the eye of the beholder’” [Mankiw<sup>3</sup>]. Therefore, when equity changes, this affects the distributed balance or the implementation or rights established by the law, and the investigation on compliance with the law belongs to the lawyer.

Moreover, although this task may seem more relevant to a politician than a lawyer, it should be noted that in the order of the sources of law not all policies are consistent with the sources' hierarchical order. In relation to flexicurity – which is created as policy but then brings about considerable actions on the part of the legislator – examining it with an economical-legal approach would mean translating flexibility as efficiency and security as equity.

As such, when flexicurity introduces or alters the balance between flexibility and security, this affects the established distribution of the sources of law.<sup>4</sup> In particular, there can be sources that establish a hierarchy of market needs and work needs, as takes place in the Italian Constitution and EU Treaties, for example, though they are at odds. There can be rights, such as fundamental rights, that are resistant to the needs of flexibility and become real limitations (for

433; E. Kaufman Bruce, *Il contributo al diritto del lavoro della analisi economica secondo l'approccio neoclassico e istituzionale*, in *Dir. rel. ind.*, 2009, 272 ss.; A. Zoppoli, *La soggettività economico-professionale del lavoratore nelle politiche di flexicurity*, in *Dir. lav. merc.*, 2007, 535; P. Loi, *L'analisi economica del diritto e il diritto del lavoro*, in *Giorn. Dir. lav. rel. ind.*, 1999, 547

<sup>3</sup>N. G. Mankiw, *Principles of Economics, 4th Edition*, South-Western College Pub, 2006.

<sup>4</sup>P. Pascucci, *Competitività, flessibilità delle tutele e diritti fondamentali - Flessibilità e sicurezza sul lavoro*, in *Dir. e lav. nelle Marche*, 2009, 112 ss.; M. Rodriguez Pinero, *Costituzione, diritti fondamentali e contratto di lavoro*, in *Giorn. dir. lav. rel. ind.*, 1995, 29 ss.; F. Carinci, A. Pizzoferrato, «Costituzione» europea e diritti sociali fondamentali, in *Lav. dir.*, 2000, p. 281 ss.; S. Giubboni, *Confini della solidarietà. I modelli sociali nazionali nello spazio giuridico europeo*, in *Pol. Dir.*, 2011, 395 ss. M. Cinelli, *Competitività, flessibilità delle tutele, diritti fondamentali*, in *Riv. it. dir. lav.*, 2009, 299 ss.

example, the principle of equality and non-discrimination)<sup>5</sup>. There are other fundamental rights that can be implemented to varying degrees, but do need to be implemented. Finally, there are fundamental rights that, though not directly affected by efficiency policies, depend on other rights that are involved in policies, such as flexicurity<sup>6</sup>.

All these relationships can be studied: as effects, by means of the economic approach, with these effects reconsidered in light of the sources; by means of the legal approach, as insurmountable limits to policies reconsidered in light of the economics institution. For these reasons law and economics cannot function independently of each other (Perulli 2008)<sup>7</sup>. As such, legal experts will use economists' tools to increase their knowledge of the empirical effects of law, especially with reference to the argument of whether or not they are expected.

In particular, this paper will consider theories of externality and distortion of taxes and analyse the observed effects of them in light of the limits of constitutions and treaties. For the legal expert this means exploiting the conceptual apparatus without betraying the original mission.

<sup>5</sup>S. Sciarra, *Diritti sociali. Riflessioni sulla Carta europea dei diritti fondamentali*, in *Arg. Dir. lav.*, 2001, 391 ss.; J. Rivero Lamas, *Diritti fondamentali e contratto di lavoro: efficacia orizzontale e controllo costituzionale*, *ivi*, 2004, 443 ss.; G. Bronzini, V. Piccone, *La Corte del Lussemburgo «scopre» la Carta di Nizza: verso una nuova stagione nella tutela «multilevel» dei diritti fondamentali?*, in *Riv. crit. Dir. lav.*, 2006, 979 ss.; G. Bronzini, *I diritti fondamentali nell'ordinamento integrato e il ruolo della Corte di giustizia*, *ivi*, 2009, 863; N. Bruun, K. Lörcher, *Innovazione sociale: la nuova la nuova giurisprudenza della Corte di Strasburgo sui diritti fondamentali del lavoro*, in *Riv. Giur. Lav.*, 2012.

<sup>6</sup>Law, like economics, operates in a network – no changes can be made without considering the indirect effects on the whole system. As such the mirror of the economist reflects the image of the legal expert. For example, a change to one aspect of internal security such as working hours could lead to a loss in social security – in childcare, for instance – even when it does not produce any changes to pay. Just as economic studies “help us avoid policies that sacrifice efficiency without any benefits in terms of equity” (Mankiw 2006), legal studies can help us to avoid policies that reduce (or at worse erase) equity as an unforeseen network effect, even when policies appear virtually neutral or with limited equity losses. If the network effects have not been assessed, the balance between efficiency and equity cannot function as expected and will be unpredictable. (Plato would tell Kleinias not to confuse commensurable greatness and incommensurable greatness).

<sup>7</sup>A. Perulli, *Efficacia e diritto del lavoro*, in *Riv. giur. lav.*, 2008, 107 ss.

## 2. RELATED LITERATURE

Many studies on employment, income, employment conditions, safety, flexibility and undeclared work have been conducted in different fields (i.e. law, economics, sociology, politics), but they are not all correlated with one another. This study will gather together suggestions, in particular those of the legal studies by Zoppoli (2007)<sup>8</sup>, Bellavista (2007A, 2008), Perulli (2008), Giubboni (2007), and Bell (2012); those of the economic studies by Oropallo and Proto<sup>9</sup> (2006, 2006A) in relation to the impact of the reduction of labour costs on companies and families; and, from a sociological perspective, those by Karpinnen and Bushak (2008, ed.), and Vermeyleen and Hurley,<sup>10</sup> regarding flexicurity in the EU; last but not least, the critical studies on flexinsurance by Tangian<sup>11</sup>. Obviously, much of the vocabulary is taken from Wilthagen and Tros.<sup>12</sup>

Although very different from one another, in all of these studies there are implicit functional links to the idea of “social cooperation in which the supreme values and rights of its members are compared with each other as a sign of weighting and balance” (Ghezzi 2004 cited by Perulli 2008), which inspired our research.

<sup>8</sup>L. Zoppoli, *La flexicurity dell'Unione europea: appunti per la riforma del mercato del lavoro, in Italia*, in *WP C.S.D.L.E. “Masimo D'Antona*, n. 141/2012.; Id., *Flexicurity e licenziamenti: la strict Employment Protection Legislation*, in *Dir. lav. merc.*, 2007, 597; A. Bellavista, *Armonizzazione e concorrenza tra ordinamenti nel diritto del lavoro*, in *AA. VV., La competizione tra ordinamenti giuridici*, Milano, Giuffrè, 2007, p. 73 ss.; Id., *Al di là del lavoro sommerso*, in *Riv. Giur. Lav.*, 2008, 9 ss.; A. Bellavista, A. Garilli, *Politiche pubbliche e lavoro sommerso: realtà e prospettive*, in *Riv. giur. Lav.*, 2012, 269 ss.

<sup>9</sup>F. Oropallo, G. Proto, *L'impatto di alcune misure di riduzione del cuneo fiscale sulle imprese e sulle famiglie*, in “*Metodi e Strumenti a supporto delle Politiche*”, Istat, Giugno 2006.

<sup>10</sup>A. Parent-Thirion, E. Fernández Macías, J. Hurley, G. Vermeyleen, *Fourth European Working Conditions Survey*, Eurofound, Luxembourg, Office for Official Publications of the European Union, 2007.

<sup>11</sup>A. S. Tangian, *'Monitoring flexicurity policies in Europe from three different viewpoints'*, WSI Discussion, paper n. 145, Düsseldorf, Hans Böckler Foundation, June 2006.

<sup>12</sup>T. Wilthagen, F. Tros, *The concept of “flexicurity”: A new approach to regulating employment and labour markets*, *Transfer*, Vol. 10, No. 2, 2004, pp. 166–186; E idem, *Towards 'flexicurity'?: Balancing flexibility and security in EU Member States*, *Paper for the 13th World Congress of the International Industrial Relations Association (IIRA)*, Berlin, September 2003.

This new way translated in rules, at the EU level, means setting up ‘some form of direct social redistribution’ to reduce ‘the distortionary risks due to competition and arising from huge differences in social protection standards in Europe now “at Twentyseven.” (GIUBBONI 2007).

### 3. INTRODUCTION: TOWARDS A CRITICAL READING OF THE ORIGIN OF FLEXICURITY

Flexibility and security are terms that have been used to develop the debate on “new” labour law and the “new” social model for several years; they are the (necessary but insufficient) constituents of flexicurity<sup>13</sup>.

According to what is collectively reported in the literature [ex multis Maarten Keune and Maria Jepsen,<sup>14</sup> Michael Parnis,<sup>15</sup> Wilthagen, Tangian<sup>16</sup>, Jørgensen<sup>17</sup>, the neologism flexicurity traces back to Dutch sociologist Hans Adriaansens who coined the term in the mid 1990s, during an interview on the subject of preparatory works on the Dutch Flexibility and Security law of 1998/99.

Adriaansens defined it «*as a shift from job security towards employment security*». Keune and Jepsen claim that Adriaansens’ neologism was quickly adop-

ted by some Dutch (Wilthagen<sup>18</sup>, Muffels and oth,<sup>19</sup> German (Keller and Seifert 2000<sup>20</sup>; Klammer e Tillmann 2001<sup>21</sup>), Danish (Madsen 2002, 2003)<sup>22</sup> and Belgian scholars (Sels e van Hootegem 2001, Sels and oth.<sup>23</sup>), and was adopted by EU economists and sociologists in 2006; however, legal experts did not pay it any significant attention until the EU Commission Green Paper on the modernisation of labour law was published.<sup>24</sup>

After Adriaansens’s statement, the term first appeared as a scientific tenet in a paper by Ton Wilthagen in 1998 [Flexicurity – A new paradigm for labour market policy reform? Berlin: WZB Discussion paper, FSI 98- 202]. While on a normative level the two explicit constituents of flexibility and security appear in

<sup>18</sup>T. Wilthagen, *Flexicurity: A New Paradigm for Labour Market Policy Reform*. Discussion Paper FS-I 98-202, Berlin, Wissenschaftszentrum, Berlin, 1998, URL: <http://bibliothek.wz-berlin.de/pdf/1998/i98-202.pdf>; T. Wilthagen, *Managing Social Risks with Transitional Labour Markets*, in H. Mosley, J. O’Reilly and K. Schömann (eds.) *Labour Markets, Gender and Institutional Change. Essays in Honour of Guenther Schmid*, Cheltenham, Edward Elgar, 264-289.

<sup>19</sup>R. Muffels, T. Wilthagen, N. Van Den Heuvel, *Labour Market Transitions and Employment Regimes: Evidence on the Flexibility-Security Nexus*, in *Transitional Labour Markets*, WZB Discussion Paper, Berlin, (FS I 02 204), 2002.

<sup>20</sup>B. Keller, H. Seifert, *Flexicurity – das Konzept für mehr soziale Sicherheit flexibler Beschäftigung*, *WSI Mitteilungen*, 2000, 53 (5), 291-300.

<sup>21</sup>U. Klammer, K. Tillman, *Flexicurity – Soziale Sicherung und Flexibilisierung der Arbeits- und Lebensverhältnisse*, Düsseldorf: WSI-Hans Böckler Stiftung, 2001.

<sup>22</sup>P. K. Madsen, *Flexicurity’ through labour market policies and institutions in Denmark*, in P. Auer, S. Cazes, *Employment stability in an age of flexibility*, Geneva, International Labour Office, 2003, 59-105.

<sup>23</sup>L. Sels., G. van Hootegem, H. De Witte, A. Forrier and T. Vandersteene, *Flexicurity, made in Belgium. Bevindingen van twee jaar flexibiliteitsonderzoek*, in G. Vandenbroucke, *Dossier, Arbeidsmarktonderzoekersdag*, Verslagboek, 2001, 401-419.

<sup>24</sup>Cfr. Commissione Europea, 22.11.2006, *Libro Verde. Modernizzare il diritto del lavoro per rispondere alle sfide del XXI secolo*; Commissione Europea, 27 giugno 2007, *Comunicazione sulla flessicurezza*; Consiglio Europeo, 6 dicembre 2007, «*Principi comuni di flessicurezza*», presentati dal Consiglio il 6 dicembre 2007. In argomento . Aa. Vv., *I giuslavoristi e il Libro Verde “Modernizzare il diritto del lavoro per rispondere alle sfide del XXI secolo”*. Una valutazione critica e propositiva, in *Note informative CGIL*, 2007, p. 91 ss. M. Delfino, L. Zoppoli, *Flexicurity e tutele. Il lavoro atipico in Italia e in Germania*, Torino, 2008; B. Caruso, C. Massimiani, *Prove di democrazia in Europa: la “flessicurezza” nel lessico ufficiale e nella pubblica opinione*, in *Dir. lav. merc.*, 2007, p. 457 ss.

<sup>13</sup>European Commission, “*Modernisation of Labour Law to meet the challenges of the 21st century*”, COM/708, 2006; European Commission, “*Towards common Principles of Flexicurity. More and better jobs through flexibility and security*”, 2007, *DG for employment and social affairs and equal opportunities*, 2007; K. Phillips, R. Eamets, J. Allja, K. Krillo, L. Lauringson, *Approaches to Flexicurity: Eu Models*, Office for the Official Publications of the European Communities, 2007; C. Massimiani, *Flexicurity in times of crisis. (La flessicurezza nell’epoca della crisi, Dossier C.S.D.L.E. Massimo D’Antona*, n. 13/2009.

<sup>14</sup>M. Keune, M. Jepsen, *Not balanced and hardly new: the European Commission’s quest for flexicurity*, *European Trade Union Institute for Research, Education and Health and Safety (ETUI-REHS)*, in *Flexicurity and Beyond*, Henning Jørgensen & Per Kongshøj Madsen (eds.), Copenhagen, DJØF Publishing, 2007.

<sup>15</sup>M. Parnis, *Flexicurity in the European Union*, paper for the 5<sup>th</sup> Meeting, Prague, 5 May 2009.

<sup>16</sup>A. Tangian, *Analysis of the third European survey on working conditions with composite indicators*, in *European Journal of Operational Research*, 2007, 468.

<sup>17</sup>H. Jørgensen, *Danish flexicurity in crisis or just stress-tested by the crisis?*, Friedrich Ebert Stiftung, paper, 2011.

the Dutch Flexibility and Security act of July 1998 which came into force on 1st January of the next year, and in which no explicit mention was made of flexicurity, but flexibility and security measures introduced inspired by employment security rather than security in relationships were introduced.

These are summarised in the famous work “The concept of flexicurity: a new approach to regulating employment and labour markets” [Wiltaghen, Tros 2004] that subsequently formed the basis of the aforementioned Green Paper.

In terms of flexibility, these actions were intended to “inject greater flexibility into the labour market”, loosening protection against dismissal and restrictions on the use of temporary work, and in terms of security to synchronically introduce greater security for workers employed in flexible jobs. [W, T, 2004]

This asset reflects the orientation of the Dutch (Labour-Liberal) coalition government of the 90s that, to reconcile the interests of businessmen and workers, at once reinforced companies competitiveness through flexibility and protection of workers through security. This law implicitly marked the creation of the Dutch flexicurity model, even if not explicitly. It was characterised by the use of atypical contracts and flexible types of work, providing them with labour laws and social security for them analogous to those for standard work (Amoroso<sup>25</sup>).

This model has undoubtedly inspired community directives [2008/104] on temporary work and [1997/81], on part time work and [1999/70], on work through agencies, in which the security component seems to have been left as a mere equal treatment clause [Bell<sup>26</sup>] without any added value in relation to standard contracts, and is – in Italy at least – a flexible variant of the latter that provide less protection.

In truth, differentiating between the overall protection given by typical and atypical jobs goes against the spirit of flexicurity. In fact, “flexicurity thesis argues that, due to a more dynamic labour market ..., flexibility and security are inextricably linked. They form a kind of 'double bind', a mutual relationship or a syn-

<sup>25</sup>B. AMOROSO, *Luci ed ombre del modello sociale danese*, in *Dir. lav. merc.*, 2010, p. 227 ss

<sup>26</sup>M. Bell, *Between Flexicurity and Fundamental Social Rights: the EU Directives on Atypical Work*, in *European Law Review*, 2012, 31-48.

ergy: a high level of mobility or flexibility enables a country to compete successfully and also to afford a high level of in-come and employment security. At the same time, the latter should be an underlying prerequisite for sustaining high levels of flexibility” (Wiltaghen and Tros, 2004)

The premise of this betrayal can be discovered by comparing the doctrinal definition of flexicurity and the institutional definition of the Commission. According to the famous definition by Wiltaghen and Tros (based on Wiltaghen, Rogowski),<sup>27</sup> la flexicurity is

*«A policy strategy that attempts, synchronically and in a deliberate way, to enhance the flexibility of labour markets, the work organisation 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.»*

In the same paper the authors emphasise that flexicurity not only indicates a policy but also “a certain state or condition” of the labour market. As such the term must not only define a typical form of security and a typical form of flexibility,<sup>28</sup> it presupposes “a high level of mobility or flexibility enables a country to compete successfully and also to afford a high level of income and employment security” as a prerequisite of flexibility.

Conversely the community definition [Com(2007) 359 def.] describes it as:

*«A policy strategy to enhance, at the same time and in a deliberate way, the flexibility of labour markets, work organisations and employment relations on the one hand, and security — employment security and social security — on the other.»*

<sup>27</sup>T. Wiltaghen, R. Rogowski *Legal Regulation of Transitional Labour Markets*, in G. Schmid, B. Gazier (eds.) *The Dynamics of Full Employment: Social Integration through Transitional Labour Markets*, Cheltenham, Edward Elgar, 2002, 250.

<sup>28</sup>Flexicurity is (1) a degree of job, employment, income and combination security that facilitates the labour market careers and biographies of workers with a relatively weak position and allows for enduring and high quality labour market participation and social inclusion, while at the same time providing (2) a degree of numerical (both external and internal), functional and wage flexibility that allows for labour markets' (and individual companies') timely and adequate adjustment to changing conditions in order to maintain and enhance competitiveness and productivity.

As is noted at a first glance, the Commission's definition no longer states that it "attempts to improve" but rather that it "is used to improve" and as such assumes a normative character. On the other hand, in addition to substituting the heuristic adverb "synchronically" in the definition with the blander "at the same time", the strategy distracts from its main purpose, which is inclusivity, and transforms it into a general policy that nullifies the complementary aspect of the flexicurity policy in relation to other policies, especially those directed at implementing security as a prerequisite.

This is probably due to the asymmetry of EU competencies in relation to the market and social security; the former is maximal, the latter minimal.

Upholding the spirit of the scientific definition and its heuristic adverb "synchronically" would have kept flexibility and security in a double bid, while it is clear that the Commission's intervention places the market in a position of primacy and makes security a function of extensive deregulation of labour law.

The Commission thus favours a morphological approach to the fusion of flexibility and security;<sup>29</sup> mentre nella definizione scientifica si riscontrava un approccio olistico, che deriva da un tentativo di fusione dei campi semantici di flessibilità e sicurezza.

whereas the scientific definition takes a more holistic approach derived from an attempt to fuse the semantic fields of flexibility and security.

Indeed, from a morphological point of view, flexicurity is a simple fusion of the words flexibility and security; from a semantic perspective, however, this fusion is hard to define. This is both because of the extreme diversity of the semantic fields to which the two constituent terms belong, and because what keeps flexicurity balanced between the crisis of the semantic approach and the oxymoron of the morphological is a third, hidden concept that is poised between the two and (like a metal in an alloy) affects the way they are interpreted. "Balance" is sometimes simplified in relation to flexicurity.

Balance is the element that allows (or would allow) us to get closer to flexicurity in from a holistic perspective. By using this approach it is possible to

<sup>29</sup>The directives on atypical work are a clear example of this, as shown by Bell 2012.

identify balance as a function of the extent to which the sum of the two terms does not result in a trade-off in favour of one or the other. Indeed, flexicurity aims to prevent ant trade-off and the intrinsic contradictory neutralisation between its constituents.

The Danish social model, with its golden triangle, is generally considered to embody a model of flexicurity that can achieve semantic fusion and overcome the morphological oxymoron.<sup>30</sup>

In fact, in the empirical application of the so-called Danish model of flexicurity, recently re-examined by Jørgensen [2011], the overcoming of the contradictions is ab origine assigned to a cost that is triple the corresponding average in the EU/27 in terms of GDP percentage. The same author is forced to admit the "need to properly maintain the system – and not do damage to the security elements in it!" As such it is evident that the Danish model is only a Danish model and not an exportable flexicurity model, Jørgensen [2011]. The Danish model does not formalise any loosening of the security rules in employment contracts, but these rules are loose from the beginning; it does not formalise any substitute security, but it is strong and generous as per the tradition of the Scandinavian model. The Danish model does not formally relax any of the security rules in employment contracts: these rules were loose to begin with; it does not formalise any alternative form of security, but it is strong and generous as per the tradition of the Scandinavian model. In Denmark in the nineties, flexicurity brought about a worsening of Scandinavian welfare and a reduction in protection, far from the balance preached in the premise of flexicurity. Indeed, contrary to what is normally believed *«the Danish model of flexicurity is a current attempt to reform the Scandinavian welfare system that has been present in Denmark for more than a century in specific relation to the labour market, adapting it to flexible work and production systems, new forms of organising production and the competitiveness required by capitalist*

<sup>30</sup>T. M. Andersen, A flexicurity labour market in the great recession: the case of denmark, in IZA Discussion Paper , n. 5710, May 2011; S. Leonardi, Sul Libro Verde «modernizzare il diritto del lavoro per rispondere alle sfide del XXI secolo», in Riv. giur. lav., 2007, I, p. 145 ss.; E. Ales, Modello sociale europeo e flexicurity: una sorta di "patto leonino" per la modernizzazione, in Dir. lav. merc., 2007, p. 523.

*globalisation*» [Amoroso, *cf.* Jaspersen<sup>31</sup>].

It does not therefore agree with Jørgensen's [2011] passionate defence of flexicurity, according to which the two terms are not contradictory and the sum of the two produces a result greater than zero. Their intrinsic literal, logical and functional divergences are not refuted, but merely postulated as non-existent in the consolidated Danish situation and therefore not representative of a model that can be adapted to different orders.

Saying that Danish flexicurity is not exportable is equivalent to rejecting the idea that it constitutes a model and can therefore be used as a basis for a common policy.

The absence of a concrete exportable model, along with the vagueness of the Community acts (see the definition officially adopted by COM(2007) 359 def.), contributes considerably to making the concept of flexicurity elusive.

In the absence of a well-defined archetype, and with a watered-down institutional definition in comparison with the scientific equivalent, even the subsequent doctrinal processing [Muffel and others<sup>32</sup>] (and the Commission (Com(2007) 359 def.)), reaffirms the notion that flexicurity has no single form, for example the constantly evoked Danish and Dutch models, but must be combined with conditions in individual countries.

In the absence of an archetype the crucial element lies (...) in the faith in the flexicurity system on the part of its actors. This is a characteristic that could give flexicurity a certain degree of wishful thinking and a theological attribute to its supporters.

As such, faith in flexicurity is an archetype in itself that nevertheless resembles the golden triangle of the direct Danish matrix too closely, in relation to which the freedom to adjust it for each member country seems to be an attempt to give it a veneer of democracy. In this respect it has been vividly written that,

<sup>31</sup>J. Jaspersen, (edited by), *Flexicurity. The shangri-la of EU or merely another mirage?*, *EU-studies – Spring 2006 – Roskilde universitetscenter*.

<sup>32</sup>R. Muffels, *Pathways to Flexicurity in Europe: Do They Affect Male and Female Labour Market Transitions Patterns?*, in P. Ester, R. Muffels, J. Schippers, and T. Wilthagen (eds) *Innovating European Labour Markets. Dynamics and Perspectives*. Cheltenham: Edward Elgar, 2008, 95 – 129.

analogous to the motto of the Prague Spring in 1968, “socialism with a human face”, “flexicurity is a deregulation of labour markets (=flexibilization) with ‘a human face’” (Tangian 2007).

It seems hard to disagree. Thus in a Europe with a widespread and long tradition of welfare states, it would be interesting to understand the reasons behind the fate of the word flexicurity, but this task is beyond our powers and must be left to the semioticians. In any case, between 2006 and 2007 this was the central issue of EU employment policies, the subject of the Green Paper Modernising Labour Law to meet the challenges of the 21st Century [COM(2006) 708 definitive], and in Italy it entered the (Fornero) law, art. 1 which makes substantial and explicit reference to it, after having passed from the draft law (Draft Law AS n 1481, presented on 25 March 2009 for the so-called “Flexicurity Project”, n. 1872 and 1873 of 11 November 2009, for recoding trade union rights and labour law respectively). In the conclusion we will return to this issue, not to discuss its fortune further but rather the danger of this (undeserved) unconditional trust.<sup>33</sup>

#### 4. QUESTIONS POSED BY THE TITLE.

*What flexicurity; what we mean by social pollution and total security; in what terms can flexicurity be a gauge for the differential in the protection of workers.*

#### 4.A WHAT FLEXICURITY? OR: ODI ET AMO<sup>34</sup>

As already discussed in the introduction, beyond its institutional definition, flexicurity is presented as a holistic philosophy, the constituents of which, flexibility and security, are combined to generate a new subject/object that is greater than and different from their sum. As in biology, the sum of the same elements generates different subjects, not only from the elements in question, but between them as well, so in flexicurity the sum of flexibility and security should not generate

<sup>33</sup>Cfr. M. Magnani, M. Tiraboschi (a cura di), *La nuova riforma del lavoro*, Giuffrè, 2012.

<sup>34</sup>The title is borrowed from the famous ode by Catullus (Liber, Carme 85,) As in the poem Catullus tells us inextricable bond that joins the extreme feelings that literally put him on the cross (= excrucior are crucified) independently of his will, here we want to emphasize that the flexicurity elicits extreme net reactions of acceptance or rejection, but that this attitude, as in the «odi et amo», (that means: love and hate), beyond our will, being intrinsic to the binomial and, therefore, puts us on the cross in the inevitable struggle between the demolition of flexicurity and, depending on limiting the damage, its revision.

a universal flexicurity, but a (balance of) flexicurity adapted to a different cultural, social, economic or, not least, legal environment in which flexibility and security are combined.

Thus the element that allows us to “define” flexicurity is formed through a balance of flexibility and security in each individual normative context. It is also evident that the *tertium comparationis* is given by the *standard employment*, in relation to which the discussion is on increasing flexibility and compensating for it with a synchronic increase in security. Flexicurity policy therefore represents a variation of the balance of flexibility and security, or flexicurity relationship, in relation to the standard model in use.

This definition can also be used when the variation of the point of equilibrium takes place in the opposite direction, i.e. towards a decrease in flexibility compensated by a decrease in security; in this case we can call it unflexicurity;<sup>35</sup> If we assume that the purpose of flexicurity is not just any balance between flexibility and security, but rather only a balance that increases flexibility. In both cases this is obviously a relative concept, that is, relative to the standard contract used as a reference. This is the issue we will focus on.

Three corollaries are derived from this that we will apply to our flexicurity.

Firstly, it is contradictory to classify upstream social models as flexicurity or inflexicurity. In fact, if flexicurity is one size does not fit all, each legal system finds its balance point in its regulatory tradition and constitutional principles.

Secondly, as a consequence flexicurity does not adhere to a binary ON/OFF type logic, but can be created to varying degrees both between systems and within one single system.

Lastly, depending on the variability of the flexicurity/unflexicurity points of equilibrium, the standard employment contract also represents a balance point and a flexicurity relationship, or rather it is the balance point from which the variations of greater flexicurity are registered. Thus, as seen in the first corollary, the standard employment contract cannot be excluded from the range of flexicurity contracts, and actually represents the reference point for all the forms of pro-

<sup>35</sup>This aspect must obviously be kept clearly distinct from the other in that no lack of security occurs, though the flexible content is very low (see text below).

tection that a flexicurity model must replace.

In this perspective, every increase in flexibility or every decrease in security must find compensation synchronically. This compensation, which is typical of flexicurity, implies two issues. The first is that the security differential is a trade-off; the second is that neutralisation of the trade-off implies a cost.

In the economics of this work any group of contracts that ensure the same flexicurity balance with the regulatory framework will be called a community; therefore there may be a protective trade-off between communities when the differential is not replaced by a security measure or an economic trade-off when this is faced with a safety or social security provision.

#### 4.B WHAT DO WE MEAN BY “SOCIAL POLLUTION”?

To define the phrase “social pollution” we should consider the pattern of undeclared work, which takes places within an illegal system, with no security at all. This distinguishes it from informal work which, though not illegal, is equally lacking in any social or normative protection. In undeclared work, work flexibility also reaches the highest levels, albeit illegally in this case. Though this pathological and regressive form in which illegality is considered a prerequisite for remaining competitive must be severely repressed (Bellavista 2008);<sup>36</sup> it nevertheless provides evidence on which to base a comparison. The undeclared work environment has been defined as a second community by an author (Zoppoli 2007), in opposition to the legal system, which he calls the first community. This author – as widely accepted – arrives at this definition by observing the extreme extent to which the phenomenon of undeclared work has spread to in Italy, becoming a system with its own rules outside of the legal system that has even been integrated into the legal production system to some extent.

From this author we take the idea of the community to define a significantly extended and not necessarily illegal group in which the same rules are applied. As such the black market work community will be called

<sup>36</sup>Elsewhere we have demonstrated that undeclared work does not depend on the rigidity of the rules or lack of flexicurity, but rather on the socio-economic context. C. M. Cammalleri, *Lavoro e sicurezza sociale in agricoltura: breve analisi del mercato del lavoro agricolo (in Sicilia) alla scoperta della flexicurity ante litteram*, forthcoming.



community 0 in this paper to emphasise the impossibility of measuring protection in that community and its positioning outside an ordinal scale in which a combination of flexibility and security is formed from first to last, whether it is balanced or not

We call the loss of all social protection in community 0 'social pollution'.

The following paragraphs will investigate the legal basis of this equation, from which the central theme of this study will be developed.

#### 4.C WHAT DO WE MEAN BY TOTAL SECURITY?

The term total security expresses two contiguous but not distinct concepts. On the one hand, in opposition to the social pollution of community 0, total security indicates the last community on the ordinal scale of flexicurity communities, i.e. that in which – at least theoretically, or by convention – there is no loss of security, making it a pure social completion environment. As such a hypothetical flexibility intervention would produce a trade-off in security.

With reference to the previously mentioned system of communities, total security represents community 00, and therefore is unattainable by definition and outside of the ordinal system of flexicurity communities, all of which operate in the context of a free market.

On the other hand we use total security to mean an overall regulatory model capable of going beyond flexicurity and eliminating any trade-off between security and flexibility at the system level, by means of flexicurity financing system that is indifferent to the contract type and work place. To create this kind of model it is proposed that we take a line from a financing model for the security component of a fairly unorthodox form of flexicurity, as the conception of the relative security will be equally unorthodox.

In this perspective, we will again benefit from a comparison with the undeclared work pattern, as if the mechanism is suitable for supporting security costs in the black market, it will consequently be suitable for redistributing costs and benefits.

#### 5. THE PARADIGM OF REFERENCE: RIGHTS TO NECESSARY PROTECTION (“THE INCOMPRESSIBLE RIGHTS”)

For the purposes of this work it is necessary to identify the regulatory framework of the uncontrollability of certain rights. The Italian legal system will be

used for this, as it is known to the speaker. However, because of its extensive relations with international and EU organisations, the conceptual frameworks used, the literature and proposed solutions, could be adequately exported to other legal systems if appropriately adapted. After all, there are those who claim that «*similarities are always more than differences in European Social Model(s)*» [Maselli <sup>37</sup>]

The investigation in question builds on the concept of *decent work*.

#### 5.A THE DECENT WORK

The Decent Work Report presented at the International Labour Conference by Director General of the ILO Juan Somavia in 1999 states: «*the primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity*». Thus the concept of decent work was formed, comprising of freedom, equity, security and human dignity in work. During the 97th Session of 10 June 2008 decent work was incorporated into the ILO's Declaration on Social Justice for a Fair Globalization. Four strategic objectives were identified in the context of the *Decent Work Agenda*: «*to promote and implement the standards and fundamental principles and rights at work; to enhance the opportunities for men and women to obtain decent employment and wages; to expand the scope and heighten the effectiveness of social protection for all; to strengthen tripartism and social dialogue*». We will refer to the second and third of these objectives in our comparison with undeclared work.<sup>38</sup>

The phrase decent work therefore focuses the fundamental issues of the ILO's action in a “single conceptual container” by highlighting that the above objectives are interrelated and interdependent. This creates a reference framework for all the orders (and all policies a fortiori): freedom, equality, security and human dignity define the boundaries of the social environment that the actors within it may not cross.<sup>39</sup>

<sup>37</sup>I. Maselli, *Beyond Flexibility and Security: A composite indicator of flexicurity*, in *Economic Policy, Centre for European Policy Studies (CEPS) Working Documents*, 27 May 2010.

<sup>38</sup>Available at <http://www.ilo.org/public/english/support/lib/century/index6.htm>

<sup>39</sup>“The ILO is concerned with decent work. The goal is not just the creation of jobs, but the creation of jobs of acceptable quality. The quantity of employment cannot be divorced from its quality. All

## 5.B DECENT WORK, ITALIAN CONSTITUTION AND FUNDAMENTAL SOCIAL RIGHTS

In the Italian Constitution, which is built with work as its foundation (art.1)<sup>40</sup>, decent work has more stringent interpretations. In the Italian constitutional order the word ‘work’ and the adjectives connected to it (equality, freedom, health and social security) are only subordinated to second place after the word ‘law’. Work (art. 1), not the market or enterprise in itself, is the founding pillar of the Republic, together with the republican form and the democratic principle. The three pillars are of equal value and equally essential importance in the construction of the post-war constitutional order in a markedly social sense.<sup>41</sup>

Beyond the specific provisions, the significant regulation for our investigation is art. 41, par. 2, which states that free private enterprise “cannot be carried out against social use in or in a way that causes harm to security, freedom and to human dignity”. The Italian Constitution subordinates the market to security, freedom and human dignity, among others. This gives social justice its position of primacy, as with its “fundamental duties of political, economic and social solidarity” (art. 2) and the Republic’s task to “to remove those obstacles of an economic or social nature which [impede] the effective participation of all workers in the political, economic and social organisation of the country” (art. 3 paragraph 2) it was intended to establish boundaries for the needs of the market.

In keeping with its statement of principles, the Italian Constitutional Charter devotes numerous and significant provisions to the protection of labour and social security. We may mention art. 35, for example, which “protects work in all its forms and practices,” art. 38 which states that “every citizen unable to work and

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societies have a notion of decent work, but the quality of employment can mean many things. It could relate to different forms of work, and also to different conditions of work, as well as feelings of value and satisfaction. The need today is to devise social and economic systems which ensure basic security and employment while remaining capable of adaptation to rapidly changing circumstances in a highly competitive global market.” Available at <http://www.ilo.org/public/english/support/lib/century/in-dex6.htm>

<sup>40</sup>Verbatim: «Italy is a democratic republic founded on work».

<sup>41</sup>There are numerous points of contact with the Weimar constitution, which, as known, is considered the prototype for social constitutions. See Mortati, *Il lavoro nella Costituzione.*, Il Dir. Lav. 1956, I, 1. G. Loy, *Una repubblica fondata sul lavoro*, in *Giorn. dir. lav. rel. ind.*, 2009, 197 ss.

without the necessary means of subsistence is entitled to welfare support”, grants workers the right “to be assured adequate means for their needs and necessities in the case of accidents, illness, disability, old age and involuntary unemployment”, disabled and handicapped persons the right “to receive education and vocational training”, art. 36 that establishes workers rights to “a remuneration commensurate to the quantity and quality of their work and in any case such as to ensure them and their families a free and dignified existence”, to “a weekly rest day and paid annual holidays”, art. 4 that implements art.1 by founding the right and duty to work, art. 37 that sanctions full equality at work, without neglecting the protection of women, stating that “Working conditions must allow women to fulfil their essential role in the family and ensure appropriate protection for the mother and child”, art. 32 that separates healthcare from working positions by making it a universal right.

As can be noted from this simple list, these founding principles, which are binding for legislators and judges, go beyond and in any case anticipate the terms of the Charter of Fundamental Rights of the European Union by half a century, as it was only very timidly brought into existence in the 3rd millennium. The provisions in arts. 20 Equality before the law, 21 Non-discrimination, 23 Equality between women and men, 34 Social security and social assistance, 35 Health care and 31 Fair and just working conditions certainly correspond to those referred to in the Italian Constitution.<sup>42</sup>

For our purposes we will consider arts. 31 and 43 of the Charter of Fundamental Rights in particular, and, unless otherwise indicated, it can be assumed that this refers to the protection of security.<sup>43</sup>

According to art. 31.1 “every worker has the right

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<sup>42</sup>The Charter of Fundamental Rights of the European Union also includes art. 30 on Protection in the event of unjustified dismissal, which has no directly corresponding Italian constitutional regulation, but however has been broadly covered by ordinary legislation from the 60s, 70s and 90s: law n. 604 of 1966, law n. 300 of 1970, law n. 108 of 1990.

<sup>43</sup>G. Arrigo, *I diritti sociali fondamentali nell'ordinamento comunitario*, in *Dir. lav. merc.*, 2005, 275; A. Perulli, *Clausole e diritti sociali. La promozione dei diritti sociali fondamentali nell'era della globalizzazione*, in *Dir. rel. ind.*, 2001, 157; B. Veneziani, *Nel nome di Erasmo da Rotterdam. La faticosa marcia dei diritti sociali fondamentali nell'ordinamento comunitario*, in *Riv. Giur. Lav.*, 2000, 779 ss.

to working conditions which respect his or her health, safety and dignity.” Consequently, a degree of security must be provided regardless of the type of contract adopted. According to art. 31.2 “every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.” As a result, a degree of security must be provided through imperative legal regulations. According to art. 34.1 “the Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.” We may also consider art. 34.3, according to which the EU “recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources.”

It is hard to overlook the strong consonance between the principle of decent work (which is certainly intended for production conditions that far removed from the EU standards) in the Italian Constitution and the terms of the Charter of Fundamental Rights. There is no risk in stating that the Charter of Fundamental Rights analytically interprets that which is defined as decent work by the EU, which is intended to therefore take on a meaning that is consistent with the recognised binding nature of the EU fundamental social rights, with a minimum security value that must be guaranteed to workers by each regulation. To phrase it differently, the Charter’s fundamental social rights represent a basic level of fundamental treatment that cannot be lowered. Although these are fundamental social rights, their content does not appear to be concretely established. In fact, even the principle of equal treatment is massively downsized when it is “comparably” combined with the reference term (as for example in fixed-term contracts and part-time work).<sup>44</sup>

It follows that each regulation by the Member States

<sup>44</sup>C. giust. 6 settembre 2011, C-108/10, *Scattolon*, in *Riv. Crit. Dir. lav.*, 2011, 575; C. Giust. 22 dicembre 2010, C-444/09, *Gavieiro Iglesias Torres*, in *Riv. it. dir. lav.*, 2011, 1294; C. giust. 13 settembre 2007, C-307/05, *Del Cerro Alonso*, *ivi*, 2008, II, 325, nt. Zapalà; C. giust. 22 novembre 2005, C-144/04, *Mangold*, in *Riv. it. dir. lav.*, 2006, 266, nt. BONARDI; C. Giust. 17 giugno 1998, causa C-243/95, *Hill*, in *D&L* 1998, 892.

interprets and implements the above principles in a consistent manner that is compatible with its own legal, economic and social traditions; there can therefore be difference levels of protection of the fundamental social right both between the Member States and within a individual regulation by a Member State depending on the different types of relationships, for example.

The issue we wish to consider does not concern individual provisions or their degree of implementation in various regulations, nor the Italian regulation that already addresses them.

We are rather interested in the common humus formed by belonging to both the ILO and the EU, considering decent work as a whole, not as a subject that affects actors on the labour market (social partners, companies, workers) but as a mandatory shared system that protects the interests (not only of the actors on the labour market but) of all European society.

We assume here that decent work creates an environment in which the duty to protect generally is a condition of public welfare. Consequently, responsibility for its maintenance is not limited to the category containing those who are directly involved.

This framework aims to compare the natural environment with the social environment (decent work), treating them equally. As a consequence the pollution of the two environments will be comparable: natural pollution, caused by the dumping and spreading of pollutants, and social pollution caused by the removal of protective regulations (i.e. security rules), as occurs in undeclared work.

## 6. LOSS OF SECURITY AS A POLLUTANT: A PARALLEL WITH ENVIRONMENTAL POLLUTION

In the above framework black market work (community 0) and the polluted environment are superimposable, as are regular work (n community) and the clean environment. At the same time – following the method we pledged to use in the preface – the roles of the actors within the two environments become superimposable and the techniques used to combat environmental pollution become exportable to the social environment. The same applies to policies against (environmental and social) pollution and for valid criteria for identifying the individuals that suffer or benefit from the pollution.

Any legal system can be used to transpose this pollution analysis grid to the social environment. For the sake of convenience we will consider the Italian system, as we know it best. Within the system we find various degrees of social protection and various degrees of implementation of fundamental social rights. With the exception of a hypothesis that will be taken into consideration later, it can be said that EU decent work is carried out in each of these labour relation regulations. Since this is carried out with a different gradation of protection, we can order the  $n$  degree communities (which we previously defined as regulatory groups that are significantly far-reaching and apply their own rules) from the least to most secure. We will place community 0 at the bottom end of these communities, as it is positioned outside the legal system and therefore lacking any degree of protection (and is flexible to the highest degree). This is the community of undeclared work. As it is an illegal community it is of course placed directly opposite the concept of decent work.

Now, since undeclared work even radically undermines decent work in so-called advanced societies, and since we have agreed it possible to define decent work as a social environment and shared asset, we can say that undeclared work creates strong pollution in the social environment. According to the nomenclature adopted, this is “social pollution”.

It cannot be doubted that undeclared work must be fought and that repressing non-declaration is in the general public interest and not the particular/individual interest of the workers that are exploited by it.

Furthermore, it is indisputable that the fight against undeclared work constitutes a fight for a clean social environment.

We have placed community 00, where work is wholly secure but not at all flexible, at the opposite end of the ordinal scale of communities. These communities at the ends of the spectrum are called social pollution and total security communities respectively, whereas all the intermediary communities are flexicurity communities (or unflexicurity according to the definition used) to various degrees, and will be called  $n$ th degree communities. For example, work that is informal but not significantly present in Europe,<sup>45</sup> legal

<sup>45</sup>In Italy these are regulated as additional work recognised with a minimum of welfare rights through a voucher mechanism. Despite

but completely lacking in protection would represent community 1; this would typically be a case of unflexicurity.

The ordering of the reference communities from 0 to infinity represents the different points of balance between flexibility and security, with a possible trade-off within the community or transitions between communities at the system level. In relation to this latter aspect, it can be observed that the choice of a point of equilibrium between different communities is neither neutral nor technical. In other words, changing worker protection from security in relationships to market security does not produce a zero-sum game. Even if the sum could be considered zero for a particular group of workers, it would have different implications for the whole system and for other categories of workers.

The exchange between flexibility and security does not readily concern sizes that are homogenous or commensurable with each other; there are forms of protection, e.g. the right to rest, that cannot be exchanged for the equivalent compensation without being considered a security loss for the worker (for example child care or psychological or physical health). There are commensurable and incommensurable sizes within flexicurity, so it would be wrong not to consider these differences if we are to avoid the trap Plato warned us of 25 centuries ago in the *Laws* through his Athenian dialogue with Kleinas.

Furthermore, the exchanging of flexibility in the relationship and security on the market does not always limit its effect to the relationship being considered. Sometimes it also affects other relationships, as occurs in cases of externalisation for example. We define these effects as network trade-offs.

The problematic nature of the exchange is well known in the most authoritative doctrine, so it is clarified that the balancing of the two constituents requires a constant effort to achieve “adequate adjustment to changing conditions in order to maintain and enhance competitiveness and productivity” (Wilthagen-Tros 2004).

In addition, various degrees of flexicurity (including those between different countries) can create a distortion of competition when greater competitiveness is pursued through social dumping, which is what happens. Its laudable intent to fight misuse and combat undeclared work, it is very cumbersome and ends up being ineffective.

pens to the highest degree in the case of undeclared work.

## 7. DISPERSION OF SECURITY AS A NEGATIVE EXTERNALITY

*Just as environmental pollution cannot be stopped if we want to continue to produce the energy that is indispensable for the functioning of the planet, a certain dose of social pollution is required to allow the globalised labour market to function when aiming to find a decent occupation for every worker.*

*The comparison between the atmospheric environment and the social environment, and above all the recognition that both environments have a “public good-common good” legal nature, allows us to consider varying degrees of pollution of the common environment (whether it be environmental or social) that are tolerable for the sake of satisfying indispensable functions, under certain conditions, whereas that of the 0 community is intolerable.*

*Obviously, the production of pollutant substances does not always lead to pollution, as adequate prevention measures can be adopted. In the same way, it is not necessarily true that the anti-pollution measures adopted will always stop all pollution. In fact they normally only succeed in reducing it, causing limited pollution. A similar consideration can be made in relation to the social environment: not all flexibility (which is opposite to security) is pollution; not all flexibility “pollutes” to the same degree.*

*As such, with all the caveats of the case, the differences between the dispersion of security produced by undeclared work and that produced by atypical work can be considered quantitatively.*

*In the schema adopted, both are a form of social pollution, although to varying extents and with differing degrees of toleration on the part of the legal system.*

*In the lexicon of the economists this “necessary pollution” is called negative externality.<sup>46</sup> Economic*

<sup>46</sup>«An externality is the impact of one person's actions on the well-being of a bystander. If the effect on the bystander is adverse, it is called a negative externality; if it is beneficial, it is called a positive externality. In the presence of externalities, society's interest in a market outcome extends beyond the well-being of buyers and sellers in the market; it also includes the well-being of bystanders who are affected. - Because of externality, the cost to society of producing aluminum is larger than the cost to the aluminum producers. For each unit of aluminum produced, the social cost in-

theory states that externality, though inevitable, should be internalised<sup>47</sup> to some extent, i.e. at least part of the benefits that the individual enjoys by polluting the common good should be given back to the community.

The remedies proposed by the economists to internalise negative externalities are of a diverse nature, and include bans, subsidies, tradable entry rights<sup>48</sup> and Pigovian taxes.<sup>49</sup>

The proposal we intend to advance is heading in this direction. Considering the existing security differential between one community and another, and taking

*cludes the private costs of the aluminum producers plus the costs to those bystanders adversely affected by the pollution», in such way Mankiw 2006. On theme cfr. F. Pellizzari, Esternalità ed efficienza: un'analisi multisettoriale, in *Economia politica - Journal of analytical and institutional economics*, 2004, 99; F. Sarracino, Esternalità negative, beni posizionali e crescita economica, *Il Ponte*, 2009, 128; G. Chirichiello, Esternalità ed il teorema di Coase: un teorema, nessun teorema, o molti teoremi? Una introduzione critica, in *Riv. dir. comm. e di dir. gen. obbl.*, 2004, 673; F. Odella, Conseguenze inattese e geni dei processi economici: il ruolo delle esternalità nell'approccio sociologico, in *Sociologia del lavoro*, 2003, 99 ss.*

<sup>47</sup>«Such a tax is said to be internalizing the externality because it gives buyers and sellers in the market an incentive to take account of the external effects of their actions». Mankiw (2006)

<sup>48</sup>«That can reduce pollution most easily would be willing to sell whatever permits they get, and those firms that can reduce pollution only at high cost would be willing to buy whatever permits they need. As long as there is a free market for the pollution rights, the final allocation will be efficient whatever the initial allocation. [...] With pollution permits, polluting firms must pay to buy the permit. (Even firms that already own permits must pay to pollute: The opportunity cost of polluting is what they could have received by selling their permits on the open market). Both Pigovian taxes and pollution permits internalize the externality of pollution by making it costly for firms to pollute». Mankiw (2006)

<sup>49</sup>«Taxes enacted to correct the effects of negative externalities are called Pigovian taxes, after economist Arthur Pigou (1877-1959), an early advocate of their use. [...] Most economists would prefer the tax. They would first point out that a tax is just as effective as a regulation in reducing the overall level of pollution. [...] In essence, the Pigovian tax places a price on the right to pollute. Just as markets allocate goods to those buyers who value them most highly, a Pigovian tax allocates pollution to those factories that face the highest cost of reducing it. Whatever the level of pollution the EPA chooses, it can achieve this goal at the lowest total cost using a tax. [...] Pigovian taxes are unlike most other taxes. Most taxes distort incentives and move the allocation of resources away from the social optimum. [...] Pigovian Taxes correct incentives for the presence of externalities and thereby move the allocation of resources closer to the social optimum. Thus, while Pigovian taxes raise revenue for the government, they enhance economic efficiency». Mankiw (2006)

into account that as we gradually move towards a flexible community we lose security in favour of flexibility, in the given paradigm the protection, i.e. security, differential constitutes a degree of social pollution.

This particular form of pollution harms social protection, whether considered the product of the transition from a more secure to a less secure community, or considered as the result of remaining in a more flexible and therefore less secure community. This is because at the system level it is invariably not those who use flexible work who pay the (due) greater social and financial costs of flexibility, but the entire (social) environment.

## 8. INTERNALISING SOCIAL POLLUTION

### 8.A INTERNALISATION THROUGH FLEXINSURANCE: PARTIAL ADHERENCE.

Specifically in relation to this aspect (not considering community 0, with its undeclared work, as part of the problem at all) flexinsurance was put forward as a proposal (Tangian 2007). It is a measure that uses an insurance type mechanism and tends to internalise the cost of the security required to balance out the increase in flexibility when creating new flexicurity equilibriums, making those who benefit from the flexibility, i.e. from the employment, bear the costs.

The idea, originating in the ancient Roman maxim *cuius commoda eius incommoda*, is that greater flexibility results in greater compensatory security costs that must be borne by those benefitting from the flexibility and not the community.

According to this theory, which is based on the scalability of security, a social contribution is needed that is borne by the companies that use atypical labour in order to finance the security measures required to balance out the precariousness.

We should acknowledge that flexinsurance introduces a positive redistributive mechanism between those who offer secure work and those who offer precarious work, to the advantage of the former, and therefore constitutes a internalisation tool in the social pollution paradigm adopted.

This approach is definitely interesting and analogous to what is being proposed from a structural perspective, i.e. internalisation of the social pollution dispersion by those who produce it. However, the choice of the insurance mechanism proposed is not convin-

cing at all. In fact, as will shortly be explained, it is a fair but ineffective remedy, in that the insurance mechanism would do nothing more than merely neutralise the internal difference in competitiveness between precarious and stable employment.

Furthermore, the adoption of a traditional insurance mechanism, based on a social contribution proportional to pay and in any case related to a contractual type would reverse the costs on precarious workers salaries de facto and would, even for work insured by flexinsurance, reproduce the conditions of low competitiveness that led to the haemorrhage of stable jobs in favour of states in which labour has lower costs than in the EU an in which labour intensive processes are as good as domestic labour from a qualitative perspective, with consequent social dumping.

In other words, flexinsurance presupposes closed markets and the absence of undeclared work, while one of the main problems of protection is that of social dumping between systems and communities, particularly with community 0.

#### 8.A.1 CONTINUED: PREREQUISITES FOR SOCIALISED INTERNALISATION

The model being proposed, conversely, is intended above all to tackle the social pollution caused by community 0 and from there apply it to other, lesser forms of dispersion of security caused by atypical employment. It proposes modifying the source of security financing and, in part, social welfare to make it upstream. We are aware that the prospect is highly unorthodox and difficult to understand where the scope of social security and social welfare are fairly clearly distinct (as for example in EU treaties). In Italy, however, this distinction is slightly blurred, as despite the recent welfare reforms, for example, even the pension and unemployment systems draw significantly on resources from general taxation.

Regardless of the differing welfare and assistance regulations, as social welfare is completely outside EU jurisdiction, the point is that that welfare affects and is affected by the assistance and security system. Moreover, welfare is mostly dependent on the standard or non-standard nature of the employment relationship to which it applies and as such this indirectly conditions the degree of security and assistance needed for atypical jobs.

Therefore, even keeping the two areas of social protection separate between social security and welfare, they will still influence each other reciprocally. When the social insurance system becomes unsuitable or insufficient for providing the protection needed, we witness a surrogate social security assistance function. That is, when the scope of the welfare intervention is reduced up stream, for example through minimum income.

When the social insurance system is found to be insufficient, it means that the amount of under protected work at its base is too high, and, once again, this leads to a intervention supplementing the social assistance.

The dispersion of security caused by enlarging the flexible communities is therefore also reproduced in the relationship between care and welfare protection.

In this sense the line of intervention proposed intersects with the functioning of social welfare. In fact, the closer an employment relationship is to standard work, the more welfare coverage it will have, and therefore the need for social care assistance will be less. Therefore the relationship will have another degree of intrinsic and self-financed security.

Conversely, the closer undeclared work is to them (including undeclared work itself) the more minor the community will be considered and the welfare intervention, and correspondingly the need for assistance and the use of general taxation, will be greater to counter-balance a negative externality produced by an individual employer for his or her own benefit.

We can observe that in this system greater flexibility corresponds to greater use of assistance to implement a flexicurity balance. Even if we consider the compensation to be adequate (and therefore regardless of the existence of a trade-off) it emerges that the cost of greater flexibility burdens the community and not those who enjoy the flexibility; under the same working conditions these latter bear lower costs than standard work. This cost differential (which implies a certain protection differential) transferred to the society without any compensation constitutes a dispersion of security.

### **8.A.2 CONTINUED: THE NECESSITY OF HARMONISED INTERNALISATION.**

Again, the same social pollution structure, i.e. with a dispersion of security, is reproduced within each

state when delocalisation is considered. In fact, delocalising production to countries with a lesser social protection (and therefore smaller cost of work) is equivalent to dispersing a social security financing source from a dual perspective.<sup>50</sup>

On the one hand, the quota of delocalised production, which is already destined for the domestic market of individual countries, no longer finances any social protection measures for domestic workers-consumers, and on the other hand, its quota no longer contributes to financing social insurance because of the cost of labour required to produce it. We can observe here that flexinsurance, which is based on a Bismarckian payment system with compulsory social contributions, is also completely ineffective in this instance. As said, it affects the cost of labour, but as that cost is either delocalised or shifted to the black market (in the case of undeclared work) it is unable to affect it.<sup>51</sup>

It therefore appears transitory to pursue work to support the social costs of the flexibility required by the market rather than address the result of the work. However and wherever this is produced, be it in community 0 or in a delocalised or flexible community, it returns to the place in which the products or services procured for the work in question, in the form of revenue. Correspondingly, the need to find another system to finance the on-going economic commitment needed for compensatory security required to balance out the flexicurity.

### **8.B CONTINUED: TOWARDS A PROPOSAL FOR**

<sup>50</sup> «We cannot accept the exploitation and underpayment of our European colleagues. And we cannot accept the relocation of workplaces from Denmark to other countries as companies try to compete on unfair terms and conditions in order to save production costs», said Harald Børsting LO-President

<sup>51</sup> Thus, seen from the point of view of the crisis, flexicurity in its common understanding as a flexibility–security combination looks disadvantageous, with some reservations for cases of generous social security. The Commission’s latest concept of flexicurity as “security through flexibility” turns out to be unconditionally disadvantageous in a crisis. The flexicurity concept promoted by the European Commission therefore does not pass the test imposed by the crisis. This implies that the notion of flexicurity requires a profound revision and should not be further applied in its current form. A better alternative to flexicurity would be “normalisation” of employment relations, that is, a reduction of flexibility, which, among other things, would also result in less social security expenditure. (ETUI Policy Brief European Economic and Employment Policy Issue 3/2010 *Not for bad weather: flexicurity challenged by the crisis*, Andranik Tangian )

## INDIRECT TAXATION ON FLEXICURITY.

We can marry Tangian's model of flexinsurance with the idea of the scalability of the insurance burden in proportion to flexibility. The proposal is to move a large part of the taxation for social insurance away from a tax on work, which is a type of direct task levied on the cost of work, to an indirect tax on the value of the work.

As has been observed by Davies (2006) «*it's not bought levels of welfare. States can still regulate and use taxation to ensure universal coverage. It's about institutions and borders. Provision is being fragmented and de-nationalised. It remains to see how far this will go, but the trend is for Member States to encourage the process by themselves stimulating more diversity and freedom of provision, and so creating a proto-market which EU law than takes further*».<sup>52</sup> Though European social law is experiencing a new era (Giubboni 2007), we are still far from having a widespread EU model as per articles 31 paragraph 1, and 31 paragraph 4 of the Charter of Fundamental Rights of The European Union.

At present it is only decent work that is burdened by the weight of financing a widespread social protection system, as it bears the responsibility of security. As such it becomes less and less competitive in communities with precarious work and (exploitation) of undeclared work. A vicious cycle of trade-offs between community 0 and the n degree, more secure communities is triggered in the presence of this security gap, which is greater for employers with high rates of employment.

It is a paradoxical phenomenon. Priority is given to the issue of unemployment and decent work, and efforts are not directed towards harmonising social protection systems but rather towards extending it to work sans phrases (flexibility in flexicurity) instead of concentrating on the issue of security in itself. Following the path that makes protected work more costly and therefore less competitive, while making less protected work more competitive, the gap between protected and exploited widens in violation of the lines traced by arts. 31 and 34 of the Charter of Fundamental Rights. A lot of time is spent focussing on harmonising flexib-

<sup>52</sup>G. Davies, *The Process and Side-effects Harmonisation of European Welfare States*, New York University School of Law, Jean Monnet Working Paper, n. 02/2006.

ility and very little is spent on addressing security.

It is thus possible to infer that it is necessary to harmonise the method of financing the social security system functional to the implementation of worker protection, mobility and the circulation of business, which are in turn required and prerequisite for the common market to avoid distortions. This anti-distortion perspective allows us to dribble, to borrow a footballing metaphor, through the hermeneutic tight spot posed by chapter VII on the fundamental value of the Charter. Moreover, chapter VII is also intended to protect against the distortion of competition.

The proposed protection system is not exactly universal, though it may appear to be at first. It cannot be ascribed to either a Bismarckian or Beveridgean model. It is called a "hybrid model" for the reason that elements of both coexist within it, but not referring to the coexistence of various universal and insurance security services on the system level. Rather it is a model that takes from both in relation to the financing of that security service.

The hybrid model helps to neutralise the contract type as a means of financing the social security system that is unaffected by tax and contribution pressures.

Indeed, some EU policies<sup>53</sup> suggest reducing the impact of contributions on wages and therefore shift the tax burden from direct to indirect taxes to reduce the cost of work.

Our hypothesis is moving in this direction: a Pigouvian "total security" tax that does not create externalities, and on the other hand helps to internalise externalities by targeting the wages that create them.

It is well known that the financial and institutional situation in the EU/27 countries varies significantly, but the shared pathways of flexicurity do not exclude the transferability of alternative tools. Now let's suppose that a study relating to changes in the Italian system for financing social security could become a transferable "idea".

## 9. THE CONJECTURE: FROM SOCIAL CONTRIBUTIONS ON EARNINGS TO A SPECIAL INDIRECT TAX ON THE VALUE OF THE WORK.

First, let's consider the system's security needs as a

<sup>53</sup>Zoppoli 2007, Bellavista 2006, in ordine a COM (2008), e in ordine a (COM (98) 219 finale e sempre BER-CAR-RIC 2000; e in ordine all'IRAP Coppola 2007.



universal need, as all studies on flexicurity do (e.g. Wermeylen-Hurley 2007), not in the Beveridgean sense of the term, but in the sense of the general need of a society.

Second, the conjecture does not anticipate any changes in terms of objective and subjective conditions for the provision of services, as with the contribution imposed on the workers, although it may be useful for other reasons.

Therefore the conjecture consists of modifying the contributory condition from the extent of remuneration to the value of the result of the work.

In the Danish system often cited by flexicurity supporters, the circular mechanism of auto-adjustment between flexibility, Welfare-Workfare and work is posed without a connection to the working relationship, so the “labour costs” do not seem appreciably different in terms of the type of flexibility. In a system designed in this way the contributory pressure to finance the widespread social security system is circumvented by the use of non-standard contract types.

From this observation it can be inferred that if the taxation system for financing social security is transferred to the price of the product or service, whoever produces the product or service at a competitive price or whoever purchases it at a competitively contributes to it. As long as the social tax is directly levied on work, the only way to avoid this tax is to make use of black market work, which we called an illegal community, where the competitive value is variously achieved through under-pricing and lower costs.

When most of the economy is undeclared and many contract types have different forms of financing that are inversely proportional to the security need that they generate, the relative cost continues, in fact, to be borne by regular work, the relative cost of which increases in relation to its typical counterpart.

In this way community 0 displaces the cost of financing the security required to decrease the need that these communities create in relation to standard work into the  $n$  degree communities, and each  $n$  degree community displaces it proportionally to the more secure community above it.

There is a part of the price of the product or service that is intrinsically intended for security, but it is subtracted from the financing of this because of a technic-

al tax problem that fails to target the dispersion of security, causing negative externalities and distortion of competition.

One thing is certain: only people pay the taxes. The direct and indirect labour costs are levied on the price of the product. When the same product is made using less labour or more flexibility, the need for security increases and the revenue from the contribution serving the social security system decreases. As such, ultimately, altering the way in which the contribution amount recovers the financing is less heretical than it may seem at first glance.

We think that there is a greater need to redistribute the social contribution between companies in terms of balancing the trade-off between flexibility and security on the one hand, and to remove the social externalities of the trade-off on the other. To increase security and maintain a balance of flexicurity, an analysis will be made of the results of a study by Oropallo-Proto<sup>54</sup> on the incidence of deductibility of the cost of labour based on a tax of net equity paid by companies (IRAP [Italian regional tax on productive activities], the revenue of which is connected to the financing of the national health service, a typical social security measure).

Normally, the cost of labour is not deductible from the taxable IRAP. The study hypothesises the possibility of deducting social contributions of the whole labour cost. The simulation shows that the deduction rate is much higher in the fifth quintile in which the companies are ordered according to the revenue produced by each work per unit of product. This quintile contributes more because it deducts fewer costs, as it does not deduct the cost of labour. Comparing the fifth quintile with the total we can observe the paradoxical effect that those who contribute more to financing the social security system and consequently use less flexible work or black market work pays more contributions. Observing the percentage of reduction between the deduction of the cost of labour it can be deduced that the greater the employment, the lower the need for security though the contribution is greater. The study also highlights that the manufacturing industries in particular pay much more than all the other sectors.

<sup>54</sup>F. Oropallo, G. Proto, *L'impatto di alcune misure di riduzione del cuneo fiscale sulle imprese e sulle famiglie*, in “*Metodi e Strumenti a supporto delle Politiche*”, Istat, Giugno 2006.

This paradox has been indirectly countered by law no. 296 of 2006 (known as the 2006 Finance Act) with which the government reduced the “tax wedge”<sup>55</sup> by acting on the social security taxable base. The method of obtaining this reduction by means of deductions and surtaxes on the IRAP taxable base is very technically complicated (Coppola<sup>56</sup>). Our interest is limited to its principles and effects of the transition between different tax systems on families and companies. The intervention of the law convinces us of the patency of the theory. The study by Oropallo and Proto (2006, 2006A) also shows the effects of the 2006 Finance Act with reference to the greater or lesser deduction of the cost of labour from the taxable base.

### 10. THE PROPOSAL

As has been seen above, transitions between flexibility models or between communities produce trade-offs. The multi-dimensional nature of flexicurity suggests pursuing the integration of different state policies, increasing the interaction between different element and different policies (labour law, labour market policies and social protection systems<sup>57</sup> (Vermeyleyn-Hurley 2007).

We therefore propose a mechanism that gradually transitions between the various systems towards a uniform financing system based on the added value of the work. This must relate to organisations with high employment rates per unit of product and – indirectly – proportionally higher costs due to those who directly or indirectly bring about social dumping as the result of their policies for containing the cost of labour.

In fact, this is a prerequisite that has been observed as “an important element in the reflection is the financial and institutional situation of each Member State which has an impact on reform possibilities. It should also be underlined that all reforms require not only a good deal of political courage but might also require

<sup>55</sup>Verbatim “tax wedge”. It represents the difference between the net remuneration received by workers and labor costs paid by firms. A significant part of this difference comes from the social security contributions paid by firms.

<sup>56</sup>P. Coppola, *Le agevolazioni fiscali a favore del Mezzogiorno previste dalla Finanziaria 2007: l'ambito di operatività ed i profili di criticità*, in *Riv. econ. del Mezzogiorno*, 2007, 701

<sup>57</sup>A. Parent-Thirion, E. Fernández Macías, J. Hurley, G. Vermeyleyn, *Fourth European Working Conditions Survey*, Eurofound, Luxembourg, Office for Official Publications of the European Union, 2007

time for them to bear fruit, depending on specific economic context. The possible transferability of other 'ideas' on flexicurity depends on economic capacity and institutional policy capacity, including actors, preferences, economic viability and political will to accept these reforms at different levels” (Vermeyleyn-Hurley 2007).

To make the proposal less connected to the Italian system we will refer to VAT rather than IRAP, which has a substantially uniform regulation at EU level. At the archetypal level, in fact, the two tax structures are equal in terms of the hypothesis.

We propose modifying or introducing deductible percentage of a portion of VAT upstream by an amount equal to the portion of financing for the social security system borne by the work compensated by an increase in the general tax rate. Because it is either not declared (as in undeclared work) or because it is minor (as in atypical jobs) the non-deductible portion of the labour cost represents the portion of financing for the social security system borne by those who produced the security need, thereby creating the social internalisation promised by the hypothesis.

The expected effects of the introduction of this hybrid model are in keeping with the recommendations of the European Commission for the re-launch of the Lisbon strategy for growth and jobs.

In fact the system produces these effects:

Elimination of the tax wedge, resulting in a very close link between labour productivity, labour costs and net pay; elimination of the differences between member States on how to cope with social charges, which makes the contractual model independent of the use of the labour force and then leads to an increase in mobility for workers and companies;

A reduction in black market work, as it becomes less competitive;

Participation in social spending on the part of those who have delocalised production, but who continue to operate in the common market, where they continue to sell their products.

In this way flexicurity, the ordering criterion in the distribution of security, becomes a criterion for the redistribution of the social costs of flexibility.

“There is no perfect way to flexicurity, whether it is the 'Danish' model with more flexibility for all work-

ers, or a more 'transitional labour market' approach such as the Dutch model in which people move in and out of the labour market" (Vermeyley-Hurley 2007).

The hybrid system would trigger a virtuous circle with the effect of reducing the difference in competition at the expense of security.

#### 11. CONCLUSIONS: «WAS NOT THE LABOUR PROBLEM THE SAME EVERYWHERE?»

The magnificent fable *Animal Farm*, which Orwell encapsulates with the phrase used in the epigraph "Was not the labour problem the same everywhere?" pronounced by Napoleon with specious rhetoric directed at the humans, who are now commensal, eloquently represents what has been and, without adequate structural correction, is likely to be the parable of the social state revisited by faith in flexibility and flexicurity.

Under the best auspices of equity, justice and freedom the animals transform Manor Farm into *Animal Farm*. Under the guidance of a single thought they were pejoratively brought back to Manor Farm – since ... "the labour problem is the same everywhere" (!)

Similar to this is the parabola of the passage from a liberal state (which hid its iniquities and injustice under the banner of liberty and equality), to a welfare state, with its unequal law and with its never really disproven idea that it needed to protect workers (and the weak in general) from the market and from its highly mysterious invisible hand - so invisible, according to some,<sup>58</sup> that it does not exist!

To quote the economists, the welfare state inevitably led to a sacrifice of efficiency in favour of equity, and this obviously happened in each state in a different way. Yet even given the extreme variety of the forms this took, there is a common thread that unites the varied national experiences, namely the idea of the welfare state that, especially in Europe, has led to the various social models we know. It cannot be said that «the similarities are always more than differences in European Social Model(s)» (Maselli 2011), but it can be said that welfare is and has been considered the common foundation and basis of every economic policy and every regulatory market intervention.

The process of European unification is grafted onto

<sup>58</sup>According others «*the invisible hand is powerful but not omnipotent*»; so, Mankiw (2006)

this implicit welfare fabric starting from the Treaty of Rome, which, as known, tends towards the creation of a common market without any concern for a common social model. In this regard, in Italy at least, the accusation made by G. F. Mancini<sup>59</sup> that Europe is affected, or rather suffering, from "social frigidity"<sup>60</sup> is well known. It is a shared economic space that, without a shared welfare system, that seemed, to continue the metaphor used above, to resemble the Manor Farm organisation too closely .

In the past twenty years the effort made on behalf of the doctrine strove towards finding valid arguments in EU sources following the EEC treaty to support the idea that the "social frigidity" has been superseded by subsequent treaties, particularly the Treaty of Lisbon, and, among other things, to recognise the value of the treaty to the Charter of Fundamental Rights of the European Union. However, this commendable effort has failed to compete with the prophetic dimension of G.F. Mancini's aphorism, namely that a common market requires a common social model of equivalent power, and this point seems to have been lost.

Now, though it is true that on the one hand Mancini's motto, raw and vivid as it is, conflicts with numerous legislative provisions, not least the incorporation of the Charter of Fundamental Rights of The European Union in the Treaties, which marks a significant step forward for the EU in terms of recognising the foundational nature of certain social rights (Orlandini 2008, Gottardi 2010, Zilio Grandi 2011),<sup>61</sup> on

<sup>59</sup>Giuseppe Federico Mancini has been, *inter alia*, a professor of labor law at the University of Bologna, "Attorney General" at the Court of Justice of the European Communities from October 1982 to October 1988, and Judge of the Court of Justice of the European Communities from October 7, 1988 to his death. In 1997, the Harvard Law School has established the "Annual GF Mancini Prize in European Law."

<sup>60</sup>Verbatim "Social frigidity". G. F. Mancini, *Principi fondamentali di diritto del lavoro nell'ordinamento delle Comunità europee*, in Aa.Vv., *Il lavoro nel diritto comunitario e l'ordinamento italiano*, Cedam, Padova 1988, p. 26; G F. Mancini, *La tutela dei diritti dell'uomo: il ruolo della Corte di Giustizia delle Comunità europee*, 1989, p. 1 ss.

<sup>61</sup>G. Orlandini, *Autonomia collettiva e libertà economiche nell'ordinamento europeo: alla ricerca dell'equilibrio perduto in un mercato aperto e in libera concorrenza*, in *Giorn. dir. lav. rel. ind.*, 2008, 237; Id, *Trade Union Rights and Market Freedoms: The European Court of Justice Sets out the Rules*, in *Comp. lab. law. and pol. Journal*, 2008, 573; D. Gottardi, *Tutela del lavoro e concorrenza tra imprese nell'ordinamento dell'Unione europea*, in *Giorn. Dir. lav. Rel. ind.*, 2010, 509; G. Zilio Grandi, *Il dumping*

the other hand it is equally true that the Community policy, with particular reference to the shared pathways to flexicurity [COM(2007) 359 def.], continues to consider social rights as ancillary to the market (i.e. to greater efficiency of production) and even to its markedly free-market functionality. Evidence of this is given by the approach of the Court of Justice. The Court perfectly embodies the role of a forbidding guardian of the market. Just as the mythological Cerberus guarded the past, present and future with his three heads, both in its apparently pro-social rights<sup>62</sup> and openly pro-market rulings, the Court is guided by the need to pander to the functioning of the market, in relation to which social rights are more or less surreptitiously expendable and, perhaps, a bit less equal than others.

In effect, the Court has an easy according to art. 3 par. 3 of the TEU, which states that «*the Union L...]* shall work for the sustainable development of Europe based on L...] a highly competitive social market economy, aiming at full employment and social progress L...]».

The Treaty uses the term “(social) market economy”, but in the context of economic regulation. The strong competitiveness of the “social market economy” to which it aspires does not seem to focus on social rights at all. On the contrary, emphasis is placed on market competitiveness and social rights are places as a mere functional limitation on fairer competition and destined to succumb too the needs of the market wherever there is sufficient economic motivation to sacrifice them.

This formally justifiable interpretation is confirmed

*sociale intracomunitario alla luce della più recente giurisprudenza CGE. Quando la libertà economica prevale sui diritti sociali*, in C. Balducci, M. L. Serrano, *Atti del Convegno nazionale Nuovi assetti delle fonti del Diritto del Lavoro - 2011, Nuovi assetti delle fonti del Diritto del Lavoro - 2011*, Otranto, 10-11 giugno 2011.

<sup>62</sup>C. Giust. 21 settembre 1999, C-67/96, *Albany*, in *Foro it.*, 1999, IV, 489 Ichino, *Contrattazione collettiva e antitrust: un problema aperto*, in [archivio.pietroichino.it/attachment.asp?IDArticle=306](http://archivio.pietroichino.it/attachment.asp?IDArticle=306); A. Andreoni, *Contratto collettivo, fondo complementare e diritto della concorrenza: le virtù maieutiche della Corte di Giustizia*. (riflessioni sul caso Albany), in *Riv. Giur. Lav.*, 2000, 981; P. Lambertucci, *Principi comunitari della concorrenza e contrattazione collettiva: alcuni profili problematici*, in *Arg. Dir. lav.*, 2003, 137; S. Sciarra, *Diritto del lavoro e regole della concorrenza in alcuni casi esemplari della Corte di Giustizia europea*, in *Dir. merc. lav.*, 2000, 587 ss.

by the minor position the Charter of Fundamental Social Rights has assumed within the ranks of the treaty. When “formally” equalised, the narrow hermeneutical cage enclosing the provisions of art. 6, par.2 becomes a “substantial” counter part (“*The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties*” and especially par. 3 “*the rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions*”).

On the one hand, paragraph 2 excludes the possibility of the constitutionalisation of the Charter of Fundamental Rights of The European Union initiating any social competence at the level of the EU; on the other hand, by recalling the “common regulations on the competition on taxation and the approximation of legislations” in chapter VII, paragraph 3, glaringly places the protection of social rights below the safeguarding of the functioning of the market.

Nevertheless, even if only in relation to this weak interpretation, it is believed that the constitutionalisation of the fundamental social rights helped demonstrates that it can have a significant effect on the reconstruction of flexicurity

On the one hand, in fact, the adoption of the common principles of flexicurity (27 June 2007) is coeval to the adoption of the Treaty of Lisbon (13 December 2007), so it may not have taken account of all the implication of the legal recognition of the fundamental social rights. On the other hand, even if the non shareable, unequal relationship between fundamental social rights and shared regulations on competition is upheld, the former can be considered to have a limiting function to the so-called economic freedoms, if it is true, and it is, that, like competition, they cannot be based on a downward race in the protection of social rights and between them and especially some workers’ rights.<sup>63</sup> *In this context, even if the subordination of the Charter to chapter VII of the Treaty is upheld, it was possible to interpret flexicurity as functional in relation to the primacy of chapter VII on social integration by enhancing the security component.*

However, in the absence of adequate resources and

<sup>63</sup>See above footnote 50

a strong common welfare model, the promise of a European social model made by the Treaty of Lisbon and the Charter of Fundamental Rights is likely to follow in the respective footsteps of the *Seven Commandments*<sup>64</sup> (which were written in large white letters on the wall of the farm's granary, a site symbolic of the *Rebellion* by the animals represented in the Constitution) and the hymn *Beast of England*<sup>65</sup> (which perfectly embodied the spirit that inspired the animals to strive for better working conditions) by the society that became the "Animal Farm". It was an organisation in which the social model worked, albeit externally, meaning that doubt was formed among the humans, i.e. on the market, and efforts were made to subvert it to eliminate the possibility of a "dangerous contagion". The model worked until the *Seven Commandments* were reduced to the single famous statement "All animals are equal, but some animals are more equal than others". Some of the "other" animals who were more equal strongly resemble the market and its thirst for efficiency. The *Animal Farm* model worked until *Beast of England* was replaced with the anthem: *Comrade Napoleon*,<sup>66</sup> an anthem praising the

<sup>64</sup> «The seven commandments: 1. Whatever goes upon two legs in an enemy. 2. Whatever goes upon four legs, or has wings, is a friend. 3. No animal shall wear clothes. 4. No animal shall sleep in a bed. 5. No animal shall drink alcohol. 6. No animal shall kill any other animal. 7. All animals are equal».

<sup>65</sup> «Beasts of England, beasts of Ireland, / Beasts of every land and clime, / Harken to my joyful tidings / Of the golden future time. / Soon or late the day is coming, / Tyrant Man shall be o'erthrown, / And the fruitful fields of England / Shall be trod by beasts alone. / Rings shall vanish from our noses, / And the harness from our back, / Bit and spur shall rust forever, / Cruel whips no more shall crack. / Riches more than mind can picture, / Wheat and barley, oats and hay, / Clover, beans, and mangel-wurzels / Shall be ours upon that day. / Bright will shine the fields of England, / Purer shall its waters be, / Sweeter yet shall blow its breezes / On the day that sets us free. / For that day we all must labour, / Though we die before it break; / Cows and horses, geese and turkeys, / All must toil for freedom's sake. / Beasts of England, beasts of Ireland, / Beasts of every land and clime, / Harken well and spread my tidings / Of the golden future time».

<sup>66</sup> «Friend of fatherless! / Fountain of happiness! / Lord of the swill-bucket! Oh, how my soul is on / Fire when I gaze at thy / Calm and commanding eye, / Like the sun in the sky, / Comrade Napoleon! / Thou are the giver of / All that thy creatures love, / Full belly twice a day, clean straw to roll upon; / Every beast great or small / Sleeps at peace in his stall, / Thou watchest over all, / Comrade Napoleon! / Had I a sucking-pig, / Ere he had grown as big / Even as a pint bottle or as a rolling-pin, / He should have learned to be / Faithful and true to thee, / Yes, his first squeak should be / "Comrade Napoleon!"».

«magnifiche sorti e progressive»<sup>67</sup> of the single thought that solved every problem, just like the squaring of the circle that - *mutatis mutandis* - flexicurity promises to solve the problems of flexibility.<sup>68</sup>

The leitmotif of flexicurity only too closely evokes the legendary *Animal Farm* character *Boxer's* faith in *Comrade Napoleon*. Whenever faced with an apparent contradiction of the single thought, the honest, faithful, devotee, although quite dim-witted *Boxer* invariably answered: «Ah, that is different [...] If *Comrade Napoleon* says it, it must be right», and invariably remedied it by reciting the litany «I will work harder» - just as flexicurity seems to respond to sirens of the market by saying "we will work more flexibly!"

Though this is based on the experience of the Italian Constitution (which has reversed the perspective in relation to the EU treaty in its relationship between labour and the market) and the ILO Declaration of 2008 on decent work, it seemed necessary to find new relationships on the strength of which - albeit very generally - some essential rights could play a reconstructive role in governing the relationships between flexibility and security, i.e. relationships between the market and justice.

Therefore our answer is: *Yes, the labour problem is the same everywhere, but the remedies for it are not the same*. Ultimately, everything can be summarised in the motto: *If Comrade Flexicurity suggests it, it is not always right!*

## REFERENCES

### 1

AA.VV. 2007 I giuslavoristi e il Libro verde "Modernizzare il diritto del lavoro per rispondere alle sfide del XXI secolo" Una valutazione critica e propositiva", 2007, disponibile su: [http://ec.europa.eu/employment\\_social/labour\\_law/answers/documents/7\\_68\\_it.pdf](http://ec.europa.eu/employment_social/labour_law/answers/documents/7_68_it.pdf).

ALAIMO 2008 Il diritto al lavoro fra Costituzione nazionale e Carte europee dei diritti: un diritto "aperto" e "multilivello" WP C.S.D.L.E. "Massimo D'Antona".INT - 60/2008.

ALES 2008 Ales, Edoardo; Il lavoro non subordinato

<sup>67</sup>Verbatim: magnificent and progressive fate (or achievements). Leopardi G., Canti - (XXXIV) La ginestra, o fiore del deserto, v. 51

<sup>68</sup>In order to make flexicurity work, it is important to reflect upon the consequences for all parties involved: for the individual (worker), for the society, for companies. The key element to make this link is trust (Vermeyleen - Hurley 2007).

nell'ordinamento comunitario; Lavoro autonomo e diritto del lavoro: quali frontiere?; 2008; Symposium Università degli Studi di Roma Tor Vergata; February 12,13, forthcoming

ALES 2008a Ales, Edoardo; diritti, mercati, lavori, Modello sociale europeo e flexicurity: una sorta di "patto leonino" per la modernizzazione. forthcoming

AMOROSO 2011 "Light and shadows of the danish model", pubblicato su: <http://www.insightweb.it>

AMOROSO 2010 Luci ed ombre del modello sociale danese, in *Dir. lav. merc.*, 2010, p. 227 ss

ANDERSEN 2011, A flexicurity labour market in the great recession: the case of denmark, in *IZA Discussion Paper*, n. 5710, May 2011;

ANASTASI 2008 Anastasi, Alessandro; Lavoro autonomo e diritto del lavoro: Esperienze e problemi nei paesi dell'Europa Centro-Orientale; Lavoro autonomo e diritto del lavoro: quali frontiere?; 2008; Symposium Università degli Studi di Roma Tor Vergata; February 12,13, forthcoming

ANASTASI 2002 Anastasi, Alessandro; Globalizzazione, integrazione regionale e tutele sociali nella nuove democrazie; Globalizzazione, integrazione regionale e diritto del lavoro; 2008; Symposium Università degli Studi di Roma Tor Vergata; April 22,23, *paper*

ANDREONI 2000 Contratto collettivo, fondo complementare e diritto della concorrenza: le virtù maieutiche della Corte di Giustizia. (riflessioni sul caso Albany), in *Riv. Giur. Lav.*, 2000, 981;

ARRIGO 2005 I diritti sociali fondamentali nell'ordinamento comunitario, in *Dir. lav. merc.*, 2005, 275;

BALANDI 1996 Balandi, Gianguido; Sicurezza Sociale; *Digesto Comm.*; 1996, Torino; Vol. XIII, p.419ss

BALANDI 1984 Balandi, Gianguido; Per una definizione del diritto della sicurezza sociale; *Politica del diritto*; 1984, 555ss

BALDASSARRE 1989 Diritti inviolabili, in *Enciclopedia Giuridica* vol. XI, Treccani 1989.

BALLESTRERO 2010 Le energie da lavoro tra soggetto e oggetto WP C.S.D.L.E. "Massimo D'Antona" IT 99/2010.

BALLESTRERO 2007 "Il valore e il costo della stabilità", Relazione al convegno: "La stabilità come valore e come problema", Genova, 13-14 aprile 2007.

BALLESTRERO 2007 Europa dei mercati e promozione dei diritti, WP C.S.D.L.E. "Massimo D'Antona".INT – 55/2007.

BARBERA CARUSO 2007 Barbera, Marzia; Caruso, Bruno; In Search of a New Language: Italian Labour Law Scholarship in the Face of European Integration;

Jean Monnet Working Paper No.11/07, <http://www.jean-monnetprogram.org/papers/07/071101.html>

BARNEY 1991 "Firm resources and sustained competitive advantage", in *Journal of management*, vol. 17 n.1 1991

BECK 2000 La Società del rischio, Carocci, Roma, 2000.

BELL 2012, Between Flexicurity and Fundamental Social Rights: the EU Directives on Atypical Work, in *European Law Review*, 2012, 31-48.

BELLAVISTA, GARILLI 2012 Politiche pubbliche e lavoro sommerso: realtà e prospettive, in *Riv. giur. Lav.*, 2012, 269 ss.

BELLAVISTA 2008 Al di là del lavoro sommerso; *Rivista Giuridica del Lavoro e della Previdenza Sociale*; 2008, I, 9-24

BELLAVISTA 2007 L'emersione del «lavoro nero» nella legge finanziaria per il 2007; *Rivista del Diritto della Sicurezza Sociale*; 2007, 379ss.

BELLAVISTA 2007 Armonizzazione e concorrenza tra ordinamenti nel diritto del lavoro, in AA. VV., *La competizione tra ordinamenti giuridici*, Milano, Giuffrè, 2007, p. 73 ss

BELLAVISTA 2006 Politiche nazionali dell'occupazione e diritto comunitario della concorrenza; *Il diritto del mercato del lavoro*; 2006, I, 117-126

BELLAVISTA 2000 Il lavoro sommerso; Torino; 2000; Giappichelli

BERETTA CARUSO RICCI 2000 Il lavoro sommerso; available at [http://www.lex.unict.it/eurolabor/ricerca/dossier/dossier1/dossier\\_down.htm](http://www.lex.unict.it/eurolabor/ricerca/dossier/dossier1/dossier_down.htm)

BERTON RICHIARDI SACCHI 2009 Flessibilità del lavoro e precarietà dei lavoratori in Italia", in *Rivista Italiana di Politiche Pubbliche*, n. 1/2009.

BOERI, GARIBALDI 2008 "Un nuovo contratto per tutti", Chiarelettere, 2008.

BORTONE 2007 Le tutele e i servizi del mercato" in "Il futuro del lavoro", in "Europa, lavoro, impresa", a cura di Perulli, Halley, 2007.

BRONZINI 2009 I diritti fondamentali nell'ordinamento integrato e il ruolo della Corte di giustizia, *ivi*, 2009, 863;

BRONZINI, PICCONE 2006 La Corte del Lussemburgo «scopre» la Carta di Nizza: verso una nuova stagione nella tutela «multilevel» dei diritti fondamentali?, in *Riv. crit. Dir. lav.*, 2006, 979 ss.

BRUUN, LÖRCHER 2012 Innovazione sociale: la nuova la nuova giurisprudenza della Corte di Strasburgo sui diritti fondamentali del lavoro, in *Riv. Giur. Lav.*, 2012.

BULGARELLI 2006 Verso una strategia di life long learning: stato dell'arte e evoluzione delle politiche di formazione continua in Italia, in "Lo sviluppo del «capitale umano» tra innovazione organizzativa e tecniche di fidelizzazione", a cura di Malandrini, Russo, Giuffrè, 2006.

CAMMALLERI 2009 Contributo al dibattito sul futuro del modello sociale", Annali della Facoltà di Economia dell'Università degli studi di Palermo, 2009- anno LXIII.

CAMMALLERI 1999 Cammalleri, Calogero M; Variazioni sulla flessibilità, riflessioni de jure condito e ipotesi de jure condendo; Annali della Facoltà di Economia di Palermo; Area giuridica; L-LIII, 1996-99, 9-32

CANTARO 2007 Il diritto dimenticato. Il lavoro nella Costituzione europea. Giappichelli, Torino 2007

CAPPELLI 1998 The changing nature of work Di Frank" Ackerman, Tufts University. Global Development and Environment Institute, 1998, p. 189 ss. L'articolo originale è: "Rethinking Employment" British Journal of Industrial Relations, Vol. 33, No. 4, pp. 563-602, 1995.

CARINCI F, PIZZOFERRATO 2000 «Costituzione» europea e diritti sociali fondamentali, in Lav. dir., 2000, p. 281 ss.;

CARUSO, MASSIMIANI 2007 Prove di democrazia in Europa: la "flessicurezza" nel lessico ufficiale e nella pubblica opinione, in Dir. lav. merc., 2007, p. 457 ss.

CHIRICHIELLO 2004 Esternalità ed il teorema di Coase: un teorema, nessun teorema, o molti teoremi? Una introduzione critica, in Riv. dir. comm. e di dir. gen. obbl., 2004, 673;

CINELLI 2009 Competitività, flessibilità delle tutele, diritti fondamentali, in Riv. it. dir. lav., 2009, 299 ss.

CINELLI GIUBBONI 2005 Il diritto della sicurezza sociale in trasformazione", "Manuali modulari di diritto del lavoro" a cura di Caruso, Cinelli, approfondimenti/2, Giappichelli editore, 2005.

COPPOLA 2006 Coppola, Paola; Le attuali agevolazioni fiscali a favore del Mezzogiorno alla luce dei vincoli del Trattato CE poste a tutela del principio della libera concorrenza; Rassegna tributaria; 2007, p-1677-1714

COSTA 2001 La cittadinanza fra stati nazionali e ordine giuridico europeo: una comparazione diacronica, in BONACCHI (a cura di) Una costituzione senza stato, Bologna 2001.

D'ANTONA 1999 Il diritto al lavoro nella costituzione e nell'ordinamento comunitario, in Riv. Giur. Lav. 1999 suppl. al n.3.

DAVIES 2006 Davies, Gareth; The Process and Side-Effects of Harmonisation of European Welfare States; Jean Monnet Working Paper No.2/06, [http://www.jeanmonnet-](http://www.jeanmonnet-program.org/papers/06/060201.html)

[program.org/papers/06/060201.html](http://www.jeanmonnet-program.org/papers/06/060201.html)

DEAKIN, WILKINSON 1999 Il diritto del lavoro e la teoria economica: una rivisitazione, in Giorn. dir. lav. rel. ind., 1999, 587 ss.

DELFINO, ZOPPOLI 2008 Flexicurity e tutele. Il lavoro atipico in Italia e in Germania, Torino, 2008;

DEL PUNTA 2001 Del Punta, Riccardo; L'economia e le ragioni del diritto del lavoro, Diritto delle relazioni industriali; 2001; 38ss.

DIAMOND 2000 Diamond, Peter A; Towards an optimal social security design; Working paper 04/2000 CERP; available at [http://papers.ssrn.com/sol3/Delivery.cfm/SSRN\\_ID264290\\_co-de010402130.pdf?abstractid=264290&mirid=1](http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID264290_co-de010402130.pdf?abstractid=264290&mirid=1)

DURAND 1953 Durand, Paul M; Introduzione alla sicurezza sociale; Nuova rivista del diritto commerciale; 1953, p. 230ss

ENGBLOM 2008 The social protection of self-employed workers in Sweden" presentato a "Lavoro autonomo e diritto del lavoro: quali frontiere?" Università degli Studi di Roma Torvergata, Facoltà di giurisprudenza, Roma, 12-13 febbraio 2008.

ESPING-ANDERSEN 2000 Fondamenti sociali delle economie post-industriali, il Mulino, Bologna, 2000

FARREL 2008 Farrel, Gilda (edited by); Flexicurity - Flessibilità e welfare - Una sfida da raccogliere; 2008; Roma; Sapere 2000

GALANTINO 2011 Libera circolazione dei lavoratori e ambito di tutela uniforme, available at <http://appinter.csm.it/incontri/relaz/10785.pdf>

GALLINO 2007 Il lavoro non è una merce. Contro la flessibilità. Laterza 2007.

GARILLI 1994 Garilli, Alessandro; Il Lavoro nel sud; 1994, Torino, Giappichelli

GAROFALO, Come cambiano le regole del lavoro. Le risposte alla nuova questione sociale in "Il lavoro: valore, significato, identità e regole", a cura di Patrizia Tullini, Zanichelli, 2009

GHEZZI 2004 Ghezzi, Giorgio; *Presentazione* to Gragnoli, Enrico; Perulli, Adalberto; La riforma del mercato del lavoro e i nuovi modelli contrattuali; 2004; Padova, Cedam

GHEZZI NACCARI TORRICE 2002 Ghezzi, Giorgio; Naccari, Giovanni; Torrice, Amelia; Il Libro bianco e la Carte di Nizza – Il futuro dei diritti sociali in Italia e in Europa; 2002; Roma; Ediesse

GIDDENS 2000 Il mondo che cambia, il Mulino, Bologna, 2000;

GIUBBONI 2009 Confini della solidarietà. I model-

li sociali nazionali nello spazio giuridico europeo, in Pol. Dir., 2011, 395 ss.

GIUBBONI 2007 Giubboni, Stefano; L'azione comunitaria in materia di sicurezza sociale e in prospettiva storica. Omaggio a Lionello Levi Sandri; Rivista del Diritto della Sicurezza Sociale; 2007, 537-556

GIUBBONI 2007 Libertà di mercato e cittadinanza sociale europea", relazione al convegno promosso dalla Fondazione Lelio e Lisli Basso su " Le prospettive del welfare in europa, Roma 19 ottobre 2007.

GIUBBONI 2006 Il primo dei diritti sociali. Riflessioni sul diritto al lavoro tra Costituzione italiana e ordinamento europeo", WP C.S.D.L.E. "Massimo D'Antona" .INT – 46/2006.

GIUBBONI 2004 Da Roma a Nizza. Libertà economiche e diritti sociali fondamentali nell'Unione Europea, in Quad. Dir. Lav. 2004, 27.

GIUBBONI 2003 Giubboni, Stefano; Diritti Sociali e mercato; 2003, Bologna , Mulino

GIUBBONI 1997 Giubboni, Stefano; Cittadinanza comunitaria e sicurezza sociale: un profilo critico; Argomenti di Diritto del Lavoro; 1997, 67ss

GIUGNI 1998 Il diritto al lavoro e le trasformazioni dello Stato sociale, Vita e pensiero, Milano, 1998.

GOTTARDI 2010 Tutela del lavoro e concorrenza tra imprese nell'ordinamento dell'Unione europea, in Giorn. Dir. lav. Rel. ind., 2010, 509;

GUERRA ZANARDI 2006 Guerra, Maria Cecilia; Zanardi, Alberto; Ma il contrasto di interessi non è la soluzione 2006; lavoce.info; available at <http://www.lavoce.info/commenti/282452.html>

HEPPLE 2009 Diritto del lavoro e crisi economica: lezioni della storia europea, in Giorn. dir. lav. rel. ind., 2009, 391 ss.

ICHINO 2005 Ichino, Pietro; I giuslavoristi e la scienza economica: istruzioni per l'uso; WP C.S.D.L.E. «Massimo D'Antona. IT – 79/2005; available at [http://www.lex.unict.it/eurolabor/ricerca/wp/it/ichino\\_n79-2005it.pdf](http://www.lex.unict.it/eurolabor/ricerca/wp/it/ichino_n79-2005it.pdf)

ICHINO 2001 Contrattazione collettiva e antitrust: un problema aperto, in [archivio.pietroichino.it/attachment.asp?IDArticle=306](http://archivio.pietroichino.it/attachment.asp?IDArticle=306);

ICHINO 2001 Il dialogo tra economia e diritto del lavoro, in Riv. it. dir. lav., 2001, 165 ss.

JORGENSEN 2011 Danish flexicurity in crisis or just stress-tested by the crisis?, Friedrich Ebert Stiftung, paper, 2011.

JESPERSEN 2006 (edited by), Flexicurity. The shangri-la of EU or merely another mirage? , EU-studies –

Spring 2006 – Roskilde universitetscenter .

KAUFMAN BRUCE 2009 Il contributo al diritto del lavoro della analisi economica secondo l'approccio neo-classico e istituzionale, in Dir. rel. ind., 2009, 272 ss;

KELLER, SEIFERT 2000 Flexicurity – das Konzept für mehr soziale Sicherheit flexibler Beschäftigung, WSI Mitteilungen, 2000, 53 (5), 291-300.

KEUNE, JEPSEN 2007 Not balanced and hardly new: the European Commission's quest for flexicurity, European Trade Union Institute for Research, Education and Health and Safety (ETUI-REHS), in Flexicurity and Beyond, Henning Jørgensen & Per Kongshøj Madsen (eds.), Copenhagen, DJØF Publishing, 2007

KLAMMER, TILLMAN 2001 Flexicurity – Soziale Sicherung und Flexibilisierung der Arbeits- und Lebensverhältnisse, Düsseldorf: WSI-Hans Böckler Stiftung, 2001.

LAMBERTUCCI 2003 Principi comunitari della concorrenza e contrattazione collettiva: alcuni profili problematici, in Arg. Dir. lav., 2003, 137;

LANG 2006 Can the Danish model of "flexicurity" be a matrix for the reform of European labour markets?, settembre 2006.

LEONARDI 2007 Sul Libro Verde «modernizzare il diritto del lavoro per rispondere alle sfide del XXI secolo», in Riv. giur. lav., 2007, I, p. 145 ss.

LOI 1999 L'analisi economica del diritto e il diritto del lavoro, in Giorn. Dir. lav. rel. ind., 1999, 547

LEVI 1950 La Repubblica democratica ed il suo fondamento sociale, in Commentario sistematico alla Costituzione italiana, Firenze, G. Barbera editore, 1950.

LUCIANI 2000 Diritti sociali e integrazione europea, in Pol. Dir., 2000, 3 .

LUCIDI RAITANO 2011 Molto flessibili, poco sicuri: lavoro atipico e disuguaglianze nel mercato del lavoro italiano, Economia & Lavoro pp. 99-115, Anno XLIII, available at <http://www.sbilanciamoci.info>.

LUPI 2007 Lupi, Raffaello; Evasione fiscale e diversa rilevanza della capacità economica; Rassegna tributaria; 2007, p-1649-1669

LYON-CAEN CHAMPEIL-DESPLATS 2000 (a cura di), Services publics et droits fondamentaux dans la construction européenne, Dalloz, Paris, 2001

MADSEN 2008 Flexicurity and the european employment strategy" paper presented at the session on "World of work and welfare in Europe", Annual conference of the american sociological association, Boston, August 1-4, 2008.

MADSEN 2006 Madsen, Per K; Flexicurity: a new perspective on labour markets and social protection



policies in Europe, paper presented at the conference on 'Transitional Labour Markets and Flexicurity', Amsterdam, December 2006, available at <http://www.tilburguniversity.nl/facul-ties/frw/research/schoordijk/flexicurity/ILP/events/programme1/permasenpaper.pdf>

MADSEN 2003 Flexicurity' through labour market policies and institutions in Denmark, in P. Auer, S. Cazes, Employment stability in an age of flexibility, Geneva, International Labour Office, 2003, 59-105.

MADSEN 2002 The Danish Model of "Flexicurity" –A Paradise with some Snakes", 2002, in European Foundation for the Improvement of Living and Working Conditions Interactions between Labour Market and Social Protection Brussels May 16, 2002.

MAGNANI, TIRABOSCHI 2012 (a cura di), La nuova riforma del lavoro, Giuffrè, 2012.

MANCINI G.F 1988 Principi fondamentali di diritto del lavoro nell'ordinamento delle Comunità europee, in Aa.Vv., Il lavoro nel diritto comunitario e l'ordinamento italiano, Cedam, Padova 1988, p. 26;

MANCINI 1989 La tutela dei diritti dell'uomo: il ruolo della Corte di Giustizia delle Comunità europee, 1989, p. 1 ss.

MANDRONE 2008 Quando la flessibilità diviene precarietà: una stima sezionale e longitudinale. [http://archivio.isfol.it/DocEditor/test/File/Studi\\_Isfol\\_Occupazione\\_n.6.pdf](http://archivio.isfol.it/DocEditor/test/File/Studi_Isfol_Occupazione_n.6.pdf)

MANKIW 1998 Mankiw, N Gregory ; Principles of economics; 1998.

MARIUCCI 2006 Dopo la flessibilità cosa? Riflessioni sulle politiche del lavoro. WP C.S.D.L.E. "Massimo D'Antona".IT – 27/2005, cit. p. 14.

MASSIMIANI 2008 Massimiani, Clemente; Dossier 10 - Flexicurity. Posti di lavoro più numerosi e migliori grazie alla flessibilità e alla sicurezza; available at <http://www.lex.unict.it/eurolabor/ricerca/dossier/dossier10.pdf>

MASSIMIANI 2009 Massimiani, Clemente; Dossier 10 – Flexicurity in time of crisis, available at <http://www.lex.unict.it/eurolabor/ricerca/dossier/dossier13.pdf>

MASELLI 2010, Beyond Flexibility and Security: A composite indicator of flexicurity, in Economic Policy, Centre for European Policy Studies (CEPS) Working Documents, 27 May 2010.

MASSIMIANI 2009 Flexicurity in times of crisis. (La flessicurezza nell'epoca della crisi, Dossier C.S.D.L.E. Massimo D'Antona, n. 13/2009.

MENGONI 1998 I diritti sociali, in ADL, 1998, n. 1, p. 1 ss.

MUFFELS 2008 Pathways to Flexicurity in

Europe: Do They Affect Male and Female Labour Market Transitions Patterns?, in P. Ester, R. Muffels, J. Schippers, and T. Wilthagen (eds) Innovating European Labour Markets. Dynamics and Perspectives. Cheltenham: Edward Elgar, 2008, 95 – 129.

MUFFELS, WILTHAGEN, VAN DEN HEUVEL 2002 Labour Market Transitions and Employment Regimes: Evidence on the Flexibility-Security Nexus, in Transitional Labour Markets, WZB Discussion Paper, Berlin, (FS I 02 204), 2002.

NAPOLI 1998 (edited by) Costituzione lavoro, pluralismo sociale, Vita e Pensiero 1998.

MORTATI 1954 Il lavoro nella Costituzione, Dir. Lav., 1954, I.

MUFFELS & Oths 2007 Muffels R., Chung H., Fouarge D., Klammer U. Luijkx R., Manzoni A and Wilthagen T.; Flexibility and security over the life course: results and policy implications, European Foundation for the Improvement of Living and Working Conditions, Office for Official Publications, 2007, available at <http://www.eurofound.europa.eu/pubdocs/2007/62/en/1/ef0762en.pdf>

NOGLER 2007 La disciplina dei licenziamenti individuali nell'epoca del bilanciamento tra i «principi» costituzionali”, in Giornale di diritto del lavoro e di relazioni industriali, n. 116, anno XXIX, 2007, 4.

NONAKA TAKEUCHI 1997 The knowledge-creating company: creare le dinamiche dell'innovazione”, a cura di Umberto Frigelli e Kazuo Inumaru; presentazione di Giuseppe Alessandria, Milano, Guerini, 1997.

ODELLA 2003 Conseguenze inattese e genesi dei processi economici: il ruolo delle esternalità nell'approccio sociologico, in Sociologia del lavoro, 2003, 99 ss.

OLIVERI 2011 La lunga marcia verso l'effettività. La carta sociale europea tra enunciazione dei diritti, meccanismi di controllo e applicazione nelle corti nazionali, disponibile su: [http://www.europeanrights.eu/getFile.php?name.../Carta\\_sociale\\_Oliveri\\_1](http://www.europeanrights.eu/getFile.php?name.../Carta_sociale_Oliveri_1)

ORLANDINI 2008 Autonomia collettiva e libertà economiche nell'ordinamento europeo: alla ricerca dell'equilibrio perduto in un mercato aperto e in libera concorrenza, in Giorn. dir. lav. rel. Ind., 2008, 237; also in english Trade Union Rights and Market Freedoms: The European Court of Justice Sets out the Rules, in Comp. lab. law. and pol. Journal, 2008, 573;

OROPALLO PROTO 2006 Oropallo, Filippo; Proto, Gaetano; L'impatto sulle imprese di alcune ipotesi di riforma dell'Irap: una simulazione; available at [http://petral.istat.it/diecofis/App/cuneo\\_dpof\\_luglio.doc](http://petral.istat.it/diecofis/App/cuneo_dpof_luglio.doc)

OROPALLO PROTO 2006(A) Oropallo, Filippo; Proto, Gaetano; L'impatto di alcune misure di riduzione del cuneo fiscale sulle imprese e sulle famiglie; available at [http://petra1.istat.it/diecofis/App/ipotesi\\_riduzione\\_irap.doc](http://petra1.istat.it/diecofis/App/ipotesi_riduzione_irap.doc)

OROPALLO PROTO 2006(B) Oropallo, Filippo; Proto, Gaetano; Dossier 5 L'impatto sulle imprese della riduzione degli oneri contributivi: una simulazione; <http://petra1.istat.it/diecofis/App/f-dossier5.pdf>

PALLINI LEONARDI 2008 Le flessibilità contrattuali, porta di accesso al lavoro stabile o trappola del precariato?"; in Flessibilità e sicurezze. Il nuovo welfare dopo il protocollo del 23 luglio, a cura di Pirrone, Il Mulino, 2008

PANOVA 2008 Panova, Vassalina T, proceeding at; Lavoro autonomo e diritto del lavoro: quali frontiere?; 2008; Symposium Università degli Studi di Roma Tor Vergata; February 12, 13, forthcoming

PARENT-THIRION, FERNÁNDEZ MACÍAS, HURLEY, VERMEYLEN 2007 Fourth European Working Conditions Survey, Eurofound, Luxembourg, Office for Official Publications of the European Union, 2007

PARNIS 2009 Flexicurity in the European Union, paper for the 5th Meeting, Prague, 5 May 2009.

PASCUCCI 2009 Competitività, flessibilità delle tutele e diritti fondamentali - Flessibilità e sicurezza sul lavoro, in Dir. e lav. nelle Marche, 2009, 112 ss.

PELLIZZARI 2004 Esternalità ed efficienza: un'analisi multisetoriale, in Economia politica - Journal of analytical and institutional economics, 2004, 99;

PERULLI 2001 Clausole e diritti sociali. La promozione dei diritti sociali fondamentali nell'era della globalizzazione, in Dir. rel. ind., 2001, 157;

PESSI 2006 Economia e diritto del lavoro, in Arg. dir. Lav., 2006, 433

PERSIANI 1987 Persiani, Mattia; Sicurezza Sociale, voce; Novissimo Digesto Italiano, appendice; 1987, Torino; Vol. VII, p.212ss

PERSIANI 1984 Persiani, Mattia; Rischio e bisogno nella crisi della previdenza sociale; Giornale di diritto del lavoro e delle relazioni industriali; 1984, p.481ss

PERSIANI 1973 Persiani, Mattia; Considerazioni sulle motivazioni ideologiche dell'assistenza e della previdenza sociale e sulla loro evoluzione dovuta all'idea della Sicurezza Sociale; Rivista degli infortuni e delle malattie professionali; 1973, p.419ss

PERSIANI 1970 Persiani, Mattia; Sicurezza Sociale e persona umana; I problemi della sicurezza sociale; 1970, p.609ss

PERULLI 2008 Perulli, Adalberto; Efficacia e diritto del lavoro, Rivista Giuridica del Lavoro e della Previd-

enza Sociale; 2008, I, 107-136

PESSI 2008 Lavoro mercato impresa utilità sociale" in Massimario di giurisprudenza del lavoro, dicembre 2008 n.12.

PESSI 2005 Pessi, Roberto; Diritto della previdenza sociale, 2005, Padova; III ., Cedam

PESSI 1993 Pessi, Roberto, (edited by); Il sistema previdenziale europeo; 1993, Padova; Cedam

PHILLIPS, EAMETS, ALLJA, KRILLO, LAUR-INGSON 2007 Approaches to Flexicurity: Eu Models, Office for the Official Publications of the European Communities, 2007;

RAITANO PISANO 2007 La flexicurity danese: un modello per l'Italia?"; in Villa P. (a cura di), Generazioni flessibili. Nuove e vecchie forme di esclusione sociale, Carocci editore, Roma 2007.

REGINI 2001 La flessibilità del lavoro può servire al lavoro?"; in "Lavoro, sindacato, partecipazione" Scritti in onore di Guido Baglioni, a cura di Cella, Provasi, Franco Angeli, 2001.

RIVERO LAMAS 2004 Diritti fondamentali e contratto di lavoro: efficacia orizzontale e controllo costituzionale, ivi, 2004, 443 ss;

ROCCELLA 2008 Roccella, Massimo; Lavoro subordinato e lavoro autonomo oggi; WP C.S.D.L.E. «Massimo D'Antona. IT – 65/2008; available at [http://www.lex.unict.it/eurolabor/ricerca/wp/it/roccella\\_n65-2008it.pdf](http://www.lex.unict.it/eurolabor/ricerca/wp/it/roccella_n65-2008it.pdf)

ROCCELLA 2006 Roccella, Massimo; , Formazione, occupabilità, occupazione nell'Europa comunitaria; available at [http://www.aidlass.org/attivi-ta/2006/Relazione\\_Roccella.doc](http://www.aidlass.org/attivi-ta/2006/Relazione_Roccella.doc)

RODRIGUEZ PIÑERO 1995 Costituzione, diritti fondamentali e contratto di lavoro, in Giorn. dir. lav. rel. ind., 1995, 29 ss.;

ROMAGNOLI 2005 Divagazioni sul rapporto tra economia e diritto del lavoro, in Lav. dir., 2005, 527 ss;

ROMAGNOLI 2001 Il lavoro in Italia. Un giurista racconta, il Mulino, 2001.

SALMONI 2007 Diritti sociali e Unione europea. Dall'ordinamento comunitario allo Stato sociale europeo, in Studi in onore di Gianni Ferrara, Giappichelli 2007.

SANTORO 2006 Santoro, Alessandro; Il conflitto d'interessi come soluzione dell'evasione?; available at <http://www.secit.finanze.it/file/public/approfondimenti/santoro-shortnote-n-7.pdf>

SARRACINO 2009 Esternalità negative, beni posizionali e crescita economica, Il Ponte, 2009, 128;

SCARPELLI 2008 Scarpelli, Franco; Il contrasto al

lavoro irregolare, tra sanzioni e responsabilità; *Rivista Giuridica del Lavoro e della Previdenza Sociale*; 2008, I, 59-80

SCIARRA 2001 Diritti sociali. Riflessioni sulla Carta europea dei diritti fondamentali, in *Arg. Dir. lav.*, 2001, 391 ss.

SCIARRA 2000 Diritto del lavoro e regole della concorrenza in alcuni casi esemplari della Corte di Giustizia europea, in *Dir. merc. lav.*, 2000, 587 ss.

SELS, VAN HOOTEGEM, DE WITTE, FORRIER, VANDERSTEENE 2001 Flexicurity, made in Belgium. *Bevindingen van twee jaar flexibiliteitsonderzoek*, in G. Vandenbroucke, Dossier, *Arbeidsmarktonderzoekersdag, Verslagboek*, 2001, 401-419.

SCHMID 2007 Transitional Labour Markets: Managing Social Risks over the Lifecourse”, WZB discussion paper 2007

SOMAVIA 1999 Report of the Director General: Decent work. 87th Session Geneva, June 1999. Disponibile su: <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm>

STIGLITZ 2002 Stiglitz, Joseph; Employment, social justice and well-being; *International Labour Review*; 2002; vol. 141; No. 1-2, p. 10

SUPIOT 2005 Supiot, Alain; *Homo juridicus*; 2005; Paris, Seuil

SUPIOT 2001 Supiot, Alain; *Beyond Employment, Changes in Work and the Future of Labour Law in Europe*; New York, Oxford University Press; 2001

SUPIOT 1999 Supiot, Alain; *Transformation of labour and future of labour law in Europe*, European Commission, Office of Official Publications, Luxembourg, 1999, available at [http://ec.europa.eu/employment\\_social/labour\\_law/publications\\_en.htm](http://ec.europa.eu/employment_social/labour_law/publications_en.htm)

SUPIOT 1995 *Critique du droit du travail*, Paris, Puf, 1994.

TANGIAN 2007 Flexibility – Flexicurity – Flexinsurance: Respinse to the European Commission's Green Paper “Modernising Labour Law to Meet the Challenges of 21st century”, *WSI-Diskussionpaiera Nr. 149*, January 2007

TANGIAN 2007 European flexicurity: concepts, methodology and policies, *Transfer 4/07 13 (4) 551-573*.

TANGIAN 2007 Analysis of the third European survey on working conditions with composite indicators, in *European Journal of Operational Research*, 2007, 468.

TANGIAN 2006 Monitoring flexicurity policies in Europe from three different viewpoints’, *WSI Discussion, paper n. 145*, Düsseldorf, Hans Böckler Foundation, June 2006.

TIRABOSCHI 2005 Tiraboschi, Michele; *The Italian*

*Labour Market after the Biagi Reform; The International journal of comparative law and industrial relations*; 2005, 149-192

VERM – HURL 2007 Vermeulen, Greet; Hurley, Jhon; Varieties of flexicurity: reflections on key elements of flexibility and security, background paper; European Foundation for the Improvement of Living and Working Conditions, Office for Official Publications, Luxembourg; 2007, available at <http://www.eurofound.europa.eu/pubdocs/2007/21/en/1/ef0721en.pdf>

VIANA 2008 Viana, Marcio Tulio; *Lavoro informale in Brasile: risultati di un'indagine sul campo; Lavoro autonomo e diritto del lavoro: quali frontiere?*; 2008; Symposium Università degli Studi di Roma Tor Vergata; February 12, 13, *paper*; *Massimario di Giurisprudenza del Lavoro 2008*

WILTHAGEN 2006 Managing Social Risks with Transitional Labour Markets, in H. Mosley, J. O’Reilly and K. Schömann (eds.) *Labour Markets, Gender and Institutional Change. Essays in Honour of Guenther Schmid*, Cheltenham, Edward Elgar, 264-289.

WILTHAGEN 2006 Innovative Agreements on Employment and Competitiveness in the European Union and Norway; available at <http://www.eurofound.europa.eu/pubdocs/1999/59/en/1/ef9959en.pdf>

WILTHAGEN, TROS 2004 The concept of flexicurity: a new approach to regulating employment in the labour market; *Transfer, European Review of Labour and Research*, Vol. 10, No. 2, 2004, pp. 166-186.

WILTHAGEN, TROS 2003 Towards ‘flexicurity’?: Balancing flexibility and security in EU Member States, Paper for the 13th World Congress of the International Industrial Relations Association (IIRA), Berlin, September 2003.

WILTHAGEN, ROGOWSKI 2002 Legal Regulation of Transitional Labour Markets, in G. Schmid, B. Gazi-er (eds.) *The Dynamics of Full Employment: Social Integration through Transitional Labour Markets*, Cheltenham, Edward Elgar, 2002, 250.

WILTHAGEN 1998 Flexicurity: A New Paradigm for Labour Market Policy Reform. Discussion Paper FS-I 98-202, Berlin, Wissenschaftszentrum, Berlin, 1998, URL: <http://bibliothek.wz-berlin.de/pdf/1998/i98-202.pdf>;

VENEZIANI 2000 Nel nome di Erasmo da Rotterdam. La faticosa marcia dei diritti sociali fondamentali nell'ordinamento comunitario, in *Riv. Giur. Lav.*, 2000, 779 ss.

ZILIO GRANDI 2011 Il dumping sociale intracomunitario alla luce della più recente giurisprudenza CGE. Quando la libertà economica prevale sui diritti sociali, in C. Balducci, M. L. Serrano, *Atti del Convegno*

nazionale Nuovi assetti delle fonti del Diritto del Lavoro - 2011, Nuovi assetti delle fonti del Diritto del Lavoro - 2011, Otranto, 10-11 giugno 2011.

ZOPPOLI 2012 La flexicurity dell'Unione europea: appunti per la riforma del mercato del lavoro, in Italia, in WP C.S.D.L.E. "Masimo D'Antona, n. 141/2012.

ZOPPOLI, DELFINO 2008 (edited by); Flexicurity e tutele; 2008; Roma; Ediesse

ZOPPOLI 2007 La soggettività economico-professionale del lavoratore nelle politiche di flexicurity, in Dir. lav. merc., 2007, 535;

ZOPPOLI 2007 Flexicurity e licenziamenti: la strict Employment Protection Legislation, in Dir. lav. merc., 2007, 597;

ZOPPOLI 2007 Unione europea e lavoro sommerso: nuove attenzioni e vecchie contraddizioni, *now* available at: Rivista Giuridica del Lavoro e della Previdenza Sociale; 2008, I, 81-106

ZOPPOLI 2007 Flexicurity e tutele del lavoro tipico e atipico" WP C.S.D.L.E. "Massimo D'Antona" . INT - 57/2007

## 2

EESC(2008) European Economic and Social Committee Integrated; Flexicurity; SOC/283; available at [http://www.eesc.europa.eu/sections/soc/employment-working\\_conditions.htm283](http://www.eesc.europa.eu/sections/soc/employment-working_conditions.htm283)

EESC(2008)a European Economic and Social Committee Integrated; Guidelines for growth and jobs (2008-2010); SOC/303; available at [http://www.eesc.europa.eu/sections/soc/employment-working\\_conditions.htm#303](http://www.eesc.europa.eu/sections/soc/employment-working_conditions.htm#303)

## 3

COM(2007) European Commission; Towards Common Principles of Flexicurity: More and better jobs through flexibility and security; COM(2007) 359 final; available at <http://cor.europa.eu/document/activities/com20070359en01.pdf>

COM(2007)a European Commission; Integrated guidelines for growth and jobs (2008-2010); available at [http://ec.europa.eu/growthandjobs/pdf/european-dimension-200712-annual-progress-report/200712-annual-report-integrated-guidelines\\_en.pdf](http://ec.europa.eu/growthandjobs/pdf/european-dimension-200712-annual-progress-report/200712-annual-report-integrated-guidelines_en.pdf)

COM(2006) European Commission; Green Paper on Modernising Labour Law to meet the challenges of the 21st Century; 2006, Office for Official Publications, Luxembourg; available at [http://ec.europa.eu/employment\\_social/labour\\_law/green\\_paper\\_en.htm](http://ec.europa.eu/employment_social/labour_law/green_paper_en.htm)

COM(2006)a European Commission; Flexicurity,

EMCO working group on Flexicurity, 2006, available at [http://ec.europa.eu/employment\\_social/employment\\_strategy/pdf/emco\\_workinggroupflexicurity06\\_en.pdf](http://ec.europa.eu/employment_social/employment_strategy/pdf/emco_workinggroupflexicurity06_en.pdf)

COM(2006) "Modernisation of Labour Law to meet the challenges of the 21st century", COM/708, 2006;

COM (93)700 Libro bianco di Delors sulla crescita, la competitività, e l'occupazione presentato dalla Commissione al Consiglio nel dicembre del 1993.

COM(1998) European Commission; On undeclared work; COM(98) 219 final available at [http://aei.pitt.edu/5111/01/001483\\_1.pdf](http://aei.pitt.edu/5111/01/001483_1.pdf)

## 4

GIUSLAV. 2007 Various Authors; I giuslavoristi e il Libro verde «Modernizzare il diritto del lavoro per rispondere alle sfide del XX secolo» *now* available at ZOPP-DELF 2008

MEDEL 2007 Magistrats Européens Pour la Démocratie et les libertés; MEDEL; 2007; March 2, Barcelona available at <http://medel.bugiweb.com/usr/Declaracion%20Barcelona%20ES.pdf>

MINLAV 2007 Ministero del Lavoro e della Previdenza Sociale; Posizione italiana sul Libro Verde della Commissione Europea sulla modernizzazione del diritto del lavoro, aprile 2007 available at <http://www.lavoro.gov.it/NR/rdonlyres/A3218F87-8FD8-4B1D-A426-0E222195DE2E/0/rispostalibro-verdeaprile20071.pdf>

## 5

PATHWAYS 2007 Expert Group on Flexicurity; Flexicurity pathways, Interim report from the rapporteur T. Wiltshagen presented at the Stakeholder Conference on Flexicurity; April 2007, available at [http://ec.europa.eu/employment\\_social/employment\\_strategy/pdf/flexi\\_pathways\\_en.pdf](http://ec.europa.eu/employment_social/employment_strategy/pdf/flexi_pathways_en.pdf)

ILO 2007 United Nations System Chief Executives Board for Coordination; Toolkit for mainstreaming employment and decent work; available at <http://www.oit.org/public/english/bureau/dgo/selecdoc/2007/toolkit.pdf>

ISFOL 2009 Rapporto (sintesi), Lo scenario economico internazionale: crisi finanziaria, mercato del lavoro e capitale umano available at [http://www.lombardia.cisl.it/doc/626/626news/2009/Rapporto%20Isfol%20Sintesi\\_2009.pdf](http://www.lombardia.cisl.it/doc/626/626news/2009/Rapporto%20Isfol%20Sintesi_2009.pdf)

WCSGD 2004 World Commission On The Social Dimension Of Globalization, "A fair globalization: creating opportunities for all". 2004, consultabile su: <http://www.ilo.org/public/english/wcsdg/docs/report.pdf>

## 6

C. Giust. CE 6 settembre 2011, C-108/10, Scattolon, in Riv. Crit. Dir. Lav., 2011, 575;

C. Giust. CE 22 dicembre 2010, C-444/09, Gavieiro Iglesias Torres, in Riv. it. dir. lav., 2011, 1294;

C. Giust. CE 13 settembre 2007, C-307/05, Del Cerro Alonso, *ivi*, 2008, II, 325, nt. Zappalà;

C. Giust. CE 22 novembre 2005, C-144/04, Mangold, in Riv., it. dir. lav., 2006, 266, nt. Bonardi;

C. Giust. 17 giugno 1998, causa C-243/95, Hill, in D&L 1998, 892.

C. Giust. 21 settembre 1999, C-67/96, Albany, in Foro it., 1999, IV, 489

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