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**SOCIAL POLLUTION:  
FROM FLEXIBILITY TO EXPLOITED WORK<sup>1</sup>  
(HERETICAL IDEAS ABOUT FLEXICURITY  
TO TACKLE UNDECLARED WORK)**

*Eu vivo a libertade  
do solto oprimido  
do livre esmagado  
num grito engolido*  
(to Joachim, anonymous)<sup>2</sup>

**Riassunto** - Flessicurezza (*flexicurity*) è la fusione di due parole - flessibilità e sicurezza - in una nuova. Ma la fusione non supera l'ossimoro che è nella parola. In base ai principi del diritto del lavoro e della previdenza sociale la fusione dovrebbe mantenere la flessibilità e la sicurezza in equilibrio. Non è detto, tuttavia, né come tale equilibrio debba essere mantenuto, né qual sia la quantità di risorse finanziarie necessarie per farlo e dove e come esse vadano reperite.

Nel capitolo «*related literature*» il lavoro propone alcuni collegamenti tra le intuizioni e i risultati di alcuni saggi in campi diversi dal diritto e dichiara la linea di ricerca. Nel capitolo «*inside flexicurity*» si studia la *flexicurity* così come definita dal dibattito UE di politica del diritto e di politica economica, nelle sue tre dimensioni: della flessibilità, della sicurezza, dell'equilibrio. Si conclude che vi è un *trade-off* tra flessibilità e sicurezza e il modello non ne consente l'auto-equilibrio. Quindi, nel capitolo «*flexicurity tail side*» si esamina l'altra faccia della "flessicurezza". La si legge cioè con la stessa prospettiva dei suoi teorizzatori ma per evidenziarne gli effetti da essi negletti e contrari alla Carta di Nizza.

Lo studio - senza concessioni epistemologiche, poiché procede, si con

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1 This paper, in draft edition, with title «Beyond EU flexicurity. A hybrid model to financing social security: towards 'totalsecurity'» have been discussed at seminar European Legal Integration The New Italian Scholarship, NYU, School of Law, Lester Pollack Colloquium Room, Furman Hall, New York City, May 19-20, 2008.

2 Lyric to Joachim – Brazilian gridadore, a very flexible worker – by anonymous Brazilian student, takes from VIANA 2008. In Italian: Io vivo la libertà / dell'oppresso liberato / del libero schiacciato / in un grido soffocato; in English: I live freedom / of the loose oppressed / of the freed crushed / in a cry swallowed.

una lettura economica ma, dal punto di vista del dover essere giuridico - utilizza per il suo scopo le teorie economiche delle esternalità e degli effetti di distorsione delle imposte. La metafora proposta consiste nel sostenere che mettere a repentaglio la sicurezza sociale sia un danno della stessa natura dell'inquinamento dell'ambiente naturale. Si ritiene che siano esternalità negative, per esempio, gli effetti delle transizioni tra il lavoro regolare (prima comunità) e il lavoro irregolare (seconda comunità) e, correlativamente lo sia la transizione tra lavoro sicuro e lavoro insicuro e ancora tra la sicurezza del posto di lavoro e la sicurezza nel mercato del lavoro, distinguendo le fattispecie dal punto di vista quantitativo a cui tali forme di "inquinamento" sono ridotte, come minimo comune multiplo. Infatti, in linea astratta, nella prima comunità (quella del lavoro regolare) la sicurezza è al massimo grado, mentre nella seconda (quella del lavoro nero) lo è al minore. Così la sicurezza è sempre meno presente dove c'è maggiore flessibilità, o se si preferisce precarietà indotta dalla flessibilizzazione senza correlativa maggiore ampiezza della sicurezza. Il grado "inquinamento sociale" dipende dal punto di equilibrio della flessibilità con la sicurezza. Quindi, in un sistema di sicurezza sociale che consideri la *decent work* un 'bene sociale' esso può essere considerato come bene pubblico e (in effetti lo è). Meglio, noi consideriamo bene pubblico la sicurezza; anche quella all'interno e della flessicurezza. Si ipotizza così che chi produce inquinamento sociale, qual si considera la flessibilizzazione del lavoro, fino alla sua prima precarizzazione e poi sommersione, deve pagare i costi della sicurezza necessaria per suo il ri-bilanciamento. Per le premesse poste si ipotizza che ciò debba avvenire per mezzo di una tassa per la sicurezza sociale. Dopo tutto, gli articoli 31 - 34,1 della Carta di Nizza, in combinato disposto, disegnano un sistema UE con un ambiente sociale diffuso e pulito e puro. In altri termini, a nostro avviso, deve essere sterilizzato - ovvero ridotto, per quanto più possibile - *il trade-off* prodotto dal passaggio tra la prima e la seconda comunità; e al contempo tra contratti standard e non-standard.

Conseguenzialmente, in questo lavoro, si dissente da alcuni teologi della "flessicurezza" che dicono: che 'la fiducia è un prerequisito della flessicurezza'. Infatti, se così fosse la sicurezza da ragione di fiducia nel futuro diventerebbe motivo di fiducia nella flessibilità. Una vera e propria eterogenesi dei fini.

Il saggio propone lo strumento della tassa di sicurezza sociale nel capitolo «*hybridism pathways*» dove pone le basi empiriche e introduce l'idea di una 'tassa di sicurezza sociale' per la lotta contro il lavoro sommerso, per ridurre le esternalità, sostituire la fiducia nel mercato finanziario con una vera e forte protezione sociale. Si aspira dare un piccolo contributo per spezzare il collegamento tra

il lavoro e il finanziamento della sicurezza. Esso mira a dimostrare (anche, ma non solo, in base a una prospettiva economica) come nella flessicurezza il bilanciamento può operare in accordo con l'art. 31 e l'art. 34 della Carta dei diritti fondamentali dell'Unione europea, la giustizia sociale, la sicurezza dei lavoratori, allorché le esternalità negative prodotte dal *trade-off* all'interno della "flessicurezza" sia addebitato alla flessibilità. Il concreto della proposta considera di non modificare nulla dei presupposti soggettivi e oggettivi dei benefici, così come dei contributi a carico dei lavoratori. Al contrario, considera che questi aspetti del sistema non debbano cambiare (salvo possibili piccoli aggiustamenti).

Pertanto, la nostra congettura sul sistema ibrido propone di lasciare tutto così com'è, dal lato dei lavoratori e delle prestazioni, ma ipotizza di cambiare i criteri di imposizione dal lato delle imprese – in direzione di tassare il risultato del lavoro piuttosto che il valore del lavoro (retribuzione imponibile).

Con un meccanismo di transizione graduale da vari sistemi in un unico sistema di finanziamento, sulla base del valore aggiunto del lavoro (table 8), meccanismo che sarà vantaggioso per quelle organizzazioni che hanno un alto tasso di occupazione per unità di prodotto, e - indirettamente - in proporzione più oneroso per quelle altre organizzazioni che, direttamente o indirettamente, determinano *dumping sociale* a causa della loro politica di contenimento del costo del lavoro, mediante esternalizzazioni verso imprese o paesi a bassa protezione sociale. Da un lato si prevede di agire sulla base imponibile IVA: aumento del tasso o diminuzione a valle della detrazione IVA. (Sistema fiscale che è già armonizzato in Europa e tra le sue principali fonti di finanziamento). Da un altro lato, sul fronte dell'IRAP, invertendo l'attuale relazione del calcolo della base imponibile con il costo del lavoro. L'effetto dell'ibridazione è unidirezionale. Dovrebbe innescare un ciclo virtuoso volta a ridurre il divario di competitività tra luoghi di produzione intra ed extra UE.

**Abstract** - Flexicurity is the fusion of two words – flexibility and security – into a new one. Our opinion it cannot overcome the oxymoron that's in the word. According to principles of labour law and social security the fusion should maintains flexibility and security at balance. None said, however how that balance ought to be maintained, either how much financial resources needs or where found it.

The paper -without any epistemology disclaimers, because it makes an economics reading by normative statements - uses externalities and tax distortion effect theories. The metaphor that it uses is the jeopardizing security means damage social environment, as well as



pollution in natural environment does. Indeed, the paper considers externalities, for instance, the effects of two actions. Transition between declared work (first community) and undeclared work (second community) and related transition between job security and employment security.

In abstract line the first it is in the highest degree, the second in less degree depending on both its wideness and its point of balance with security. Hence, a social security system that working at decent level is 'social good' that can be considered as public good – indeed it is. Better, we consider public good the security – also that inside and around flexicurity. Paper says who produces social pollution such as flexibility and undeclared work ought to pay security's costs, this is social security tax. After all, articles 31 – 34.1 Nice's Chart, between them connected, draw as system of EU a widespread social environment clean and pure. In others words must be sterilized - really, reduced as much as more possible - the trade-off between first community and second community - at the same between non-standard and standard contracts. In this paper one disagrees with some flexicurity's theologians that say: 'trust is a prerequisite of flexicurity' Because if so, the security from reason of trust in the future it would become a reason of the trust in flexibility - a true aims' heterogenesis. The paper chooses the social security tax.

And so, in section hybridisms of system pathways it poses the empiric bases to introduces kind of 'social security tax' to fight undeclared work, to reduce externalities, to substitute trust in the market with true and strong financial social protection. Therefore this paper tries to give a little contribution to break link between work and security's financing. It aims to demonstrate (also but not only, according to economics perspective) as flexicurity-balance can work in accordance with art. 31 and art. 34 of the Charter of Fundamental Rights of the European Union, social justice, worker security, whether the externalities inside flexicurity's trade-off will be charged to flexibility. One considers universal like widespread, as well as flexicurity studies consider it. One considers not to change anything about subjective and objective assumptions in benefits, as well as in contribution over workers' wages. - on the contrary one considers must not change (except possibles little adjustments).

Hence, conjecture's hybridisms' substance consist to leave all as it is, on side of workers, benefits' assumptions, exchanging criteria to charge on side of enterprises – towards the direction to charge work's results' value rather than wages. In the example, employees that will have undergone a transition from employment to e.g. self-employment, – indeed former employees – keep in same wages, but

not in insurance tax.

Such as a mechanism of gradual transition from the various systems to a single system of financing, based on the value added of the work (table 8). Mechanism that will be rewarding to those organizations that have high employment per unit of product, and - indirectly - proportionately more onerous for who directly or indirectly determines social dumping as a result of their politics of containment of labour costs. On one side is expected to act on the same tax base of VAT: increase in rate, or decrease in deduction of value added VAT. (Taxation system that is in Europe already harmonised and between its main source of funding.) At same about IRAP.

The effect of the hybrids is the one way. It should introduce a virtuous cycle to reduce the gap in competitiveness between local production and extra E.U.

## FOREWORD

The research from which this study takes its title is composed of four parts; in this first part will shed the general path that will be developed in the three successive.

The others three are rated to demonstration of the patency of the conjecture made in the first. They are:

- 1) developing each frame of the Wilthagen matrix comparatively with the Italian regulation and related security. This should be looked at through a triple lens. The first is at the level of regulation - evaluation of the web effect of flexibilisation and of its impact on the supreme values of Constitution and TCE. The second is at the level of security – specific guarantee with its financing and inside trade-off. The third is at the level of trade-off of transition among communities, especially between first and second community. Consequently, as there is the EU of enterprises, it is important to define the EU of ‘secure-workers’;
- 2) investigating the relationship between the need of security and externalities – for example, the hypothesis of a *pigovian social security* tax could be investigated;
- 3) development of a model to simulate the financial effect of transition towards the hybrid model.

This paper will discuss only the first.

## Introduction

In recent years the debate in Italy on flexibility is increasingly directed towards the pursuit of flexibility models borrowed from northern, despite the EES states that there is no model of flexicurity to fit one.

Flexicurity is a matter with many important implications. One of these clearly relates to finding a point of balance between flexibility and security, according to the basic principles of labour law and social security.

Here we simply identify the common relaxation of the rules of employees protection as an epiphenomenon, regardless of the legal frame and without any ethical or legal proceedings in value or performance.

Under the paradigm of flexicurity, that is the balance between flexibility and security, this study considers the assumption that maximum flexibility to match the greatest need of social security and vice versa. So move along the axis of flexibility and generate corresponding proportion of social security needs. The problem that arises is who, how and what should finance the social security necessary to balance the introduction of flexibility or to balance the removal of protective rules.

To conduct the study will use two parallel schemes of analysis and comparison.

The first scheme of comparison is the undeclared work. It takes as a system in which the lack of protective rules and where flexibility in job is achieved at the highest level. Simultaneously it is a system that lack any rules of protection and social security. This environment is called the *second community*<sup>3</sup>, for opposition to that legal that is named the *first community*. It is assumed, naturally, as a model in which - at a time and a location given - flexibility and security balance to a default taken.

How more you move away from the default value of balance, with detriment of social security, especially as you are approaching the second community. This loss of social security caused by introduction of flexibility, or by removal of protection rules, is taken as negative externalities of the default and balanced system of social security. Similarly, the introduction of some form of increasing of social security are considered as positive externalities respect to of default and balanced system of social security.

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3 Zoppoli 2007

Here play the second scheme of comparison, properly face to internalisation of externalities. The balance at default data of the social security system is considered as it were a general public good as clean environment, that is respectively, or threatened or protected by increase or by decrease in flexibility.

Therefore, you assume that the burden of protecting the public welfare should not limited to the category of those directly concerned, namely employers and employees, but to the whole community.

It is proposed to compare the natural environment and social environment, treating one another. At the same, *pollution of the natural environment* caused by dumping and spills of pollutants is treated as pollution of the social environment resulting from introduction of flexibility or removal protection.

At this point the undeclared work (the second community) and the environment become polluted overlap, as well as the employ (first community) and the clean environment. At the same time become overlapping of actors, social and environmental issues, and vice versa.

Consequently, they become overlapping policies remediation (environmental and social) and the criteria for identifying individuals who suffer or benefit of externalities positive or negative respectively produced by remediation measures to the adoption of non-polluting.

### *Introductory statements*

Three questions are embedded in the title<sup>4</sup>. First, why «beyond» flexicurity, given that the implementation of flexicurity is still in progress, if not at a starting point? Second, why «total-security»? If the flexicurity is not completely definite yet, why do we need a new neologism and what is its meaning? Third, what does it mean a social security's financings' hybrid model? What does it have to do with ELINIS? In the following, we will answer these questions one by one.

Firstly, flexicurity seems to be the most recurring word in the EU debate with respect to the modernization of labour law. Yet, flexicurity (as well as all neologisms), despite every effort to define it and to

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4 With reference to the title, see advice in footnote 2 above, p. 1

conceptualize it, remains a theme with several unresolved implications. Indeed, the fusion of the words flexibility and security into a new one, does not imply the fusing of the two respective concepts into a new one, eliminating all the possible implicit contradictions between the two.

Hence, in our opinion, the oxymoron that is in the word cannot be overcome<sup>5</sup>. So, we believe that with flexicurity security could remain something to be implemented in the future, rather than the underlay of 'high quality labour market participation and social inclusion' (Wilthagen – Tros 2004). Accordingly, it could be the cause of distortionary competition among work contracts and countries and could be detrimental of social justice. This is why we propose moving beyond flexicurity towards «totalsecurity».

What does totalsecurity mean? Plainly, it just means security. As such, security is not even in an hypothetical balance with flexibility. Indeed, the balancing of the two requires continuous efforts to achieve the 'adequate adjustment to changing conditions in order to maintain and enhance competitiveness and productivity' (Wilthagen – Tros 2004); also, flexibility of employment by non-standard contracts, influences and depresses the security's financing sources. So, at the balancing point between flexibility and security, rather than a closer distance between the security of atypical and standard contracts, there could be a larger divide<sup>6</sup>. Moreover, any flexicurity does not seem to be able to fight undeclared work (wild flexibility).

'Total-security' is the hypothesis of a model that is indifferent, in order to financing or to pursuing the social security, to the nature of the job-contracts and employment, where undeclared work is charged social insurance taxes<sup>7</sup>. So that security will be the underlay of every kind of employment. In this paper, we will provide an incipit that this can be achieved thanks to a hybrid model of social security financing.

What is the relationship with E.L.I.-N.I.S. is the third question. For many reasons, it is useful to discuss about ELINIS and the hybrid model. We will only focus on two, one related to the ELI and the other to the NIS.

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5 Ales 2008a

6 See, Flexicurity pathways, June 2007, European Expert Group of flexicurity; COM(2007) 803 final/2 (Part V)

7 A such kind experience was recently made in Italy by fairness' index. One less recent was «tabelle ettaro-coltura» as agriculture index. (...) Yet, the question that today we want to address is a matter of assumptions. Who flexibility's benefits, rather than who employs workers, must pay social security contributions. The two studies are both by European Foundation for the Improvement of Living and Working Conditions

Firstly, with respect to ELI, flexicurity, as ruling of labour markets, involves many different systems and wants to become a tool of European Legal Integration.

One drawback of flexicurity is that «there is no ‘one side fits all’ solution for all which can be transferred readily from one country to another<sup>8</sup>» (Vemeylen – Hurley 2007). Well, it has been observed by Davies (2006) that ‘it’s not about 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 then takes further<sup>9</sup>.

Indeed, European social law is living a new era (GIUBBONI 2007) even though we are far from a EU wide level model in accordance with articles 31.1, 34.1 of the Nice Chart.

Secondly, with respect to NIS, how can we justify a study across economics and law in a paper by a labour lawyer? Truly, there is only a little bit of economics, just the necessary. Indeed, we will use the same layers of flexibility - starting from the same context - to prove that in this case the «invisible hand» fails<sup>10</sup>. Therefore, economics will be not main subject, but only the starting point of this paper: changing the ‘idea’ of system of security with reference to our empiric hypothesis in both economics and law, as antidote for poisoning by free trade and related ‘law and economics’ approaches. Safety, security, equity, equality, and social justice are the soul, aim, rationale of labour law.

### *Some starting Issues*

How we shall see later, flexicurity is an ambiguous term - it is more an ambiguous concept than an ambiguous word.

Starting from the definition due to Wiltgagen an Tros (2004), flexi-

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8 It is singular how this quip in *Flexibility and Security over life course* (2008) has become “one side fits all” ... policy in not likely approach’. Sentence in the text sounds like an invitation toward regulatory policy at EU level. Sentence here above sounds like an invitation toward abstention of law.

9 Although we disagree with some of his conclusions in order to welfare’s services, we agree in order the need to harmonize welfare.

10 Even whether it has not said expressly, it is logically alleged to aim of following competition and globalization needs.

curity has been described as: “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 (*such as security*<sup>11</sup>), while at the same time providing a high degree of numerical (both internal and external), functional and wage flexibility that allows for labour markets’ (and individual company’s) timely and adequate adjustment to changing conditions in order to maintain and enhance competitiveness and productivity’ (*such as flexibility*<sup>12</sup>).

This definition, very often used in EU documents<sup>13</sup>, very clearly and by itself leaves intact the double soul of flexicurity; does not add anything new to the sum of the two, if it does not actually subtract something by trade-off.

The surveys and papers and pathways produced by committees that have faced this issue<sup>14</sup>, and also some acts of the European Commission<sup>15</sup>, seem to bypass the problem, rather than deal with it - they seem deaf to the labour lawyers outcries (CARUSO - MASSIMIANI 2008, PERULLI 2008, ZOPPOLI 2007, ROCCELLA 2006, 2007, BELLAVISTA 2008, 2007a 2007b 2007c, and many others). The light side of flexibility, (e.g. women’s employment growth) has been deeply investigated; instead, its dark side (e.g. low wage, lower wage than standard work) has been greatly overlooked<sup>16</sup>. Whilst is clear that the labour market needs flexibility-especially on the side of employers<sup>17</sup>; it is not yet clear what level of security the market should (must) have.

Indeed, Italian<sup>18</sup> labour lawyers<sup>19</sup> considered already a mistake – or at least without evidence<sup>20</sup> - the relaxation of existing employment protection rules, contained in the Green Paper on Modernising labour

11 Our *cursive*.

12 Our *cursive*.

13 For a complete reconnaissance of word’s use, at least see Caruso Massimiani 2008

14 Long list can find on [http://ec.europa.eu/employment\\_social/employment\\_strategy/flex\\_meaning\\_en.htm](http://ec.europa.eu/employment_social/employment_strategy/flex_meaning_en.htm), [http://europa.eu/agencies/community\\_agencies/eurofound/index\\_it.htm](http://europa.eu/agencies/community_agencies/eurofound/index_it.htm), <http://www.ees-italy.org>.

15 As Employment in Europe report, chap. 2, SOC/303 above in the at footnotes.

16 See, for instance, *Flexicurity and Security over life course* 2008, *passim*.

17 Generally called company in lexicon in sociologists’ and economics’ surveys.

18 At the same, ‘Posizione italiana sul Libro Verde della Commissione Europea sulla modernizzazione del diritto del lavoro’, Ministero del Lavoro e della Previdenza Sociale, aprile 2007.

19 See, *I giuslavoristi e il Libro verde «Modernizzare il diritto del lavoro per rispondere alle sfide del XX secolo»* at ZOP-DELFI 2008.

20 See, Roccella 2006.

law to meet the challenges of the 21st century (COM(2006) 708 final), as an «automatic» solution to improve employment as a consequence of improving competition and competitiveness<sup>21</sup>, without considering matters in accordance with the fundamental rights of workers contained in the ILO, ONU, and EU Charts: working hours, annual period of paid leave, unjustified dismissal, equality, etcoetera<sup>22</sup>.

Although flexicurity is known in the European policy debate for maintaining the flexibility-security balance, it is not known the starting point of balance, that can be maintained adding or subtracting flexibility or security. It is not specified how that balance ought to be maintained, or how many financial resources are needed and where they can be found<sup>23</sup>. Moreover, flexicurity does not say how much each dose of flexibility or security weighs. So that balancing becomes impossible.

Each country can adopt its own point of balance, so that there can be large flexibility in one and ghost security in another. Indeed, whilst flexibility is free and therefore «expansive», security is expensive therefore «narrow». This is exactly what is happening nowadays. For instance, one can consider two cases.

A first example is that of the Central-Eastern European countries, where there is not - substantially - much social protection. They have lost that of the communist system and have not acquired any alternative form of social protection<sup>24</sup>. Labour law is still very weak<sup>25</sup>.

A second example is the Italian case. With the d. lgs. 276/2003, also known as the Biagi Act, 'Italy has initiated an ambitious process for the radical reform of labour market' (TIRABOSCHI 2005), where betraying

21 Nowadays, «Those of us who have looked to the self-interest of lending institutions to protect shareholders' equity, myself included, are in a state of shocked disbelief.» [...] «Yes, I've found a flaw. I don't know how significant or permanent it is. But I've been very distressed by that fact.» Alan Greenspan an interview by Edmund L. Andrews. New York Times (October 23, 2008).

22 See above footnote 13.

23 At same, for instance, also Opinion of the European Economic and Social Committee on the Proposal for a Council Decision on guidelines for the employment policies of the Member States (under Article 128 of the EC Treaty) COM(2007) 803 final/2 (Part V) – 2007/0300 (CNS) where you read, amongst many, 'The Committee reiterates the need for: - increasing employment security and preventing "insecure employment traps", inter alia, by ensuring that the unemployed are not obliged to take on jobs offering no security, by combating undeclared work and by preventing the exploitation of workers employed on short-term contracts; -measures to modernise and improve, where necessary, the social safeguards attached to non-standard forms of employment; - a balance between working time flexibility and worker protection should be pursued. On flexicurity add 'The Committee has made the following proposals: ...requires a solid context of rights, well-functioning social institutions and employment-friendly social security systems to back it up.'

24 Deeply/widely Anastasi 2008.

25 For instance, see Bulgaria case, PANOVA 2008.



the promises of the 'Libro Bianco' (White Paper), did not either implement security nor increase funds for it (BELLAVISTA 2007a, 2008).

Therefore in this paper, we shall try to give a small contribution to breaking the link between employment and security financing. We aim to demonstrate (also, but not only, according to the economics perspective) that flexicurity-balance can work in accordance with art. 31 and art. 34 of the Charter of Fundamental Rights of the European Union, social justice, worker security, if the externalities inside the flexicurity trade-off will not be at the expense of flexibility.

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In the related literature section, we will present the connections among insights from different fields and assert our contribution.

In the section flexicurity inside, flexicurity will be studied, as it has been laid down in the EU policy debate, in its three dimensions of flexibility, security, and balance. Our conclusion shall be that the trade-off between flexibilisation and security cannot be not balance that easily.

In the section flexicurity's tail side the other side of flexicurity will be read through the same lens of its theoreticians to disclose the neglected effects, and a new reading in accordance with Nice's Chart will be proposed.

In the section hybridisms of system pathways, the empiric basis will be posed to introduce a kind of 'social security tax' to fight undeclared work, to reduce externalities, to substitute trust in the market with true and strong financial social protection.

## **Related Literature<sup>26</sup>**

### *Related literature...*

Several studies on occupational, earnings, employment conditions, security, flexibility, undeclared work exist in different fields (e.g. law, economics, sociology, policy), but not all are related one another. In this paper we consider some suggestions among many, and in particular,

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<sup>26</sup> With available time this draft has never been born without the work of complete accurate and timely update of Flexicurity dossier by Massimiani <http://www.unict.it/labourweb/>. References are so many that is impossible consider all. A set of those, between gray and scientist literature are there.

from the law studies of Zoppoli (2007), Bellavista (2007a, 2008), Perulli (2008), Giubboni (2007); from the economics papers of Oropallo and Proto (2006, 2006a) about the impact of social charges' reduction on enterprises and households; from the sociological perspective of Karpinen and Bushak (2008, edited by), and Vemeylen and Hurley (2007) about flexicurity in the EU, last but not least from Wilthagen and Tros.

... *in our plot*

All these studies, though very different, reveal implicit connections in our plot. Economics and law can dialogue (PERULLI 2008) very well without subjecting one to the other, beginning with the common idea of 'social cooperation in which the supreme values and rights of its members confront themselves one another, in a sign of weighting and balance'<sup>27</sup>.

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<sup>28</sup> Twenty-seven.<sup>29</sup>» (GIUBBONI 2007)' In a few words, equity in front of all - all around the Union.

High rates of undeclared workforce are like a '*second community*'<sup>30</sup> where are in force different rules compared to the ones known and applied in the rest of the EU.' (ZOPPOLI 2007). This kind of «*second community*» depending on economics factors, produces a trade-off both among countries and between itself and «first (legal) community» and among security and *wild market*. We can define this trade-off it as «*social pollution*». If so, and this is the case, we doubt the effectiveness of the remedies suggested by Zoppoli (2007), who affirms that the undeclared workforce reduction should be gradual, at the sectoral and local levels. On the contrary, as it has been insightfully written, this kind of remedies has been already experienced in the past and it has failed. Indeed, 'one should exclude any form of benevolent tolerance, justified by the fallacious idea that the black economy might be a way of survival. (BELLAVISTA 2008)'

However, one could accept the idea of gradual surfacing, in which

27 Ghezzi 2004 quoted by Perulli 2008.

28 See - quoted on Giubboni 2007 footnote 66 - Farina 2005 and Farkas - Rimkevitch 2004.

29 On theme, see also Anastasi 2008.

30 In English in the text.

only ‘activities that have the possibility of [...] consolidation in the legal market’ will be safe, without implicit ‘acceptance of the value, more or less positive, of any form of submerged [economy] (BELLAVISTA 2008)’, provided that this occurs within a well defined time frame. Then, those pathological and regressive forms for which illegality is considered a prerequisite to remain competitive (see, BELLAVISTA 2008) should be severely repressed.

Yet, as well as the conditions of hardship that occur by ‘derogation of legal precepts’ must not be ‘considered worthy of a solidarity (BELLAVISTA 2008)’, at same time it is necessary to eliminate its causes at root. Indeed, that is for sure - whether a reason exists among the others – the reason why the «undeclared» is considered much more advantageous than the «declared». If so, as it seems, the sole severe control is an ineffective remedy in the long term. Of course, since it is so widely diffused that it is almost impossible to fully discover<sup>31</sup> and repression does not remove its causes, it could sooner rather than later come back. The bet is to break the link between «undeclared» and «advantage». This means to sterilize – or at least, reduce as much as possible - the trade-off between *first community* and *second community* – and the same between non-standard and standard contracts.

### *Research guidelines*

(A comparative kind between undeclared work and flexible work in the dynamics of trade-off)

It is impossible to deny that the private advantages of undeclared work represent negative externalities as well as an illegal cheaper agreement between employer and employee<sup>32</sup>. That is for sure, and we agree with the thesis of the heaviest repression and the strongest fight against those employers who customarily use it, but we think that it is not an effective remedy both because of the phenomenon size and diffusion and the need to remove its causes. This is what is required to all kinds of labour markets (from the most to the least flexible) in order to be fully operating.

Consequently, the reduction of the externalities of undeclared work means reducing un-security and – its advantages too. So that, the

31 For deeply and widely analysis, see insight analysis by Garilli 1994.

32 At the same Bellavista 2006 and Bellavista 2002, yet

reduction of the size and diffusion of the undeclared workforce – and its advantages - means relatively more and more controls.

We think that the illegal agreements advantages are much more an effect rather than a cause of the choice to turn into the *second community* - at least in most kinds of undeclared work. The latter is an extreme kind of flexibilisation, and as such studying it can help us to understand also the trade-off in the flexicurity.

Because competitiveness and competition are separate in the TEC «you can argue that competitiveness of the Community grabs social protection and promotion of employment» (BELLAVISTA 2006), placing them as limits to the EU competition regulation. So that, in this field, a new balance of economic policy can be pursued based on equity, without ‘forcing’ the community’s legal frame<sup>33</sup> - disclosing the relationship between undeclared work and flexibility. We can now move into analysing flexicurity.

### **Inside flexicurity**

#### *What is magic in Flexicurity?*

A first approach to flexicurity gives us a feeling of dizziness. You can see it, hear it, at times you can almost touch it, but you will never know where it will be tomorrow, because you cannot find its foundation. Flexicurity is just an hypothesis<sup>34</sup>, with its natural contradictions, that are forgotten rather than fixed. So that, the subject of demonstration - how flexibility plus security balances in flexicurity - has been shown as true and it has become prolegomena of itself.

Due to subject and time constraints, it appears inappropriate to refer to all. However, for the topic of matter, it seem more relevant to describe the confusion of plans in flexicurity. We look at the three themes it involves: flexibility, security, balance.

#### *Flexibility*

Flexibility comes with two different meanings often opposite – from the perspective of employees or employers. For employers, flexibility as

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33 In such meaning Bellavista 2006 and Roccella 2006, also as quoted in the first.

34 Despite massive literature exists on theme it is so ongoing, far from any definitive result.

consequence of 'de-standardisation of employment contracts and diversification of working time arrangements is driven by companies' requirements for greater flexibility and adaptability to market constraints<sup>35</sup>. For employees, for example, flexibility could help the 'ageing of the European population, increasing labour market participation of women, prolonged education and changes in the way households now allocate their time and income - all these trends trigger the need for more flexibility for employees, too<sup>36</sup>'. These two meanings can not overlap. Otherwise, one could make of a part a whole. That is to confuse the patch to the system in order to adjust the legal framework to the new needs of a section of people with the system itself.

These meanings are very different from the expected. The employee expects 'to have an adequate level of security as to their employment, income and career advancement'. Yet, that is not the same for the employer. It is not true that the employee and the employer want always the same thing, nowadays<sup>37</sup>.

In the first place, the relationship between employment and labour market rules is treated as quantitative rather than qualitative, where employment is inversely proportional to labour market rules, and, labour market rules are considered inclusive of job rules and job security rules<sup>38</sup>.

Then, these approaches are very similar to those that underlie the 'Green Paper', but in almost no setting, the several critical observations that have been moved on it, for instance, by Italian Labour Lawyers<sup>39</sup> and Spanish MEDEL<sup>40</sup> are discussed.

35 That survey studies the effects of men's and women's transitions among several status over life course by European Foundation for the Improvement of Living and Working Conditions edited by Muffels, Chung, Fourage, Klammer Luijckx, Manzoni, Thiel, Wilthagen. This foundation is an autonomous body of the European Union, created to assist in the formulation of future policy on social and work-related matters. [www.eurofound.europa.eu](http://www.eurofound.europa.eu). However, on this positions as well as similar others, by a statistical sociologists essays only, and more and more without keep in account any legal framework, are based assertion of inverse relationship between labour market regulation and rates of employment. The aim of this study is to demonstrate how transition from job security's to employment security's, where there was it had been thing 'just and good'. As we shall see better below, survey in its enthusiastic streaming of effect of flexibilisation, as good as hypothetic, does not keep in account all consequences by one of its quips according to is not 'one size fits all'.

36 See, footnote above.

37 This idea, instead of new is old; it has been always experienced in the 1920th, in Italy by Mussolini's Chart of Labour and its item - it failed. Why tries it again?

38 As known, there is no evidence this relationship is true. E.g. in Italian literature see Roccella 2006 and OECD breaks down there quoted.

39 See in footnotes above *I Giuslavoristi...*

40 Magistats Européens Pour la Démocratie et les libertés – MEDEL, Barcelona 2 marzo 2007.

Secondly, relationships between flexibility and security may be both positive and negative, as it is described insightfully<sup>41</sup>. For instance, consider the matrix in table 1:

**Table 1**

Table 1: *Wiltghagen Flexicurity matrix*

Flexibility	Security	Job security	Employment security	Income security	Combination security
<b>External numerical flexibility</b>	<ul style="list-style-type: none"> <li>■ Types of employment contracts</li> <li>■ Employment protection legislation</li> <li>■ Early retirement</li> </ul>	<ul style="list-style-type: none"> <li>■ Employment services/ALMP</li> <li>■ Training/life-long learning</li> </ul>	<ul style="list-style-type: none"> <li>■ Unemployment compensation</li> <li>■ Other social benefits</li> <li>■ Minimum wages</li> </ul>	<ul style="list-style-type: none"> <li>■ Protection against dismissal during various leave schemes</li> </ul>	
<b>Internal numerical flexibility</b>	<ul style="list-style-type: none"> <li>■ Shortened work weeks/part-time arrangements</li> </ul>	<ul style="list-style-type: none"> <li>■ Employment protection legislation</li> <li>■ Training/life-long learning</li> </ul>	<ul style="list-style-type: none"> <li>■ Part-time supplementary benefit</li> <li>■ Study grants</li> <li>■ Sickness benefit</li> </ul>	<ul style="list-style-type: none"> <li>■ Different kind of leave schemes</li> <li>■ Part-time pension</li> </ul>	
<b>Functional flexibility</b>	<ul style="list-style-type: none"> <li>■ Job enrichment</li> <li>■ Training</li> <li>■ Labour leasing</li> <li>■ Subcontracting</li> <li>■ Outsourcing</li> </ul>	<ul style="list-style-type: none"> <li>■ Training/life-long learning</li> <li>■ Job rotation</li> <li>■ Teamwork</li> <li>■ Multi-skilling</li> </ul>	<ul style="list-style-type: none"> <li>■ Performance related pay systems</li> </ul>	<ul style="list-style-type: none"> <li>■ Voluntary working time arrangements</li> </ul>	
<b>Labour cost/wage flexibility</b>	<ul style="list-style-type: none"> <li>■ Local adjustments in labour costs</li> <li>■ Scaling/reductions in social security payments</li> </ul>	<ul style="list-style-type: none"> <li>■ Changes in social security payments</li> <li>■ Employment subsidies</li> <li>■ In-work benefits</li> </ul>	<ul style="list-style-type: none"> <li>■ Collective wage agreements</li> <li>■ Adjusted benefit for shortened work week</li> </ul>	<ul style="list-style-type: none"> <li>■ Voluntary working time arrangements</li> </ul>	

See for example [http://ec.europa.eu/employment\\_social/employment\\_strategy/pdf/emco\\_workgroupflexicurity06\\_en.pdf](http://ec.europa.eu/employment_social/employment_strategy/pdf/emco_workgroupflexicurity06_en.pdf)

Even though the matrix considers many relationships between flexibility and security, it does not consider differences both inside the category of flexibility and inside the category of security. These simplifications have repercussions on the differences among the relationships between flexibility and security. So, any mix between flexibility and security becomes replaceable with another. In any item of the matrix, the network effects (interactions) are not considered (e.g. about the degree of self-defence effectiveness). Therefore, the Wiltghagen matrix does not consider possible trade-offs.

So, the negatives have been early forgotten - so the relationship between flexibility and security, now known as flexicurity - has become eminently positive<sup>42</sup>.

41 See e.g. Muffels and O. 2008, p.3 where is said 'However, in practice it might be that the relationship can be negative and that more flexibility jeopardises the attainment of employment security, which implies a 'trade-off' between the two elements'. But below to the and there was not came any consequence.

42 For example, more and more in Muffels and O. 2008 (edited by), p.3 where is said 'Allowing flexible working time arrangements for workers to combine working and caring or education activities is likely to have a positive effect on motivation, effort and productivity. If workers are granted more working time options, this will enhance their employability and flexibility, and will improve their chances of

Hence, let us consider now the scheme in table 2:

**Table 2**

	Short-term	Long-term
<b>Decommodification</b>	Temporary income to protect people from precarious situations (e.g. unemployment benefits)	Continuation of income in the case of structural or long-term events (e.g. disability benefits, pensions not linked to previous labour market activity)
<b>Employability</b>	Re-employment, 'secondary status' contracts such as fixed-term contracts, integration schemes in companies	Development of personal projects that are not necessarily immediately profitable in the short term on the labour market, skills development

Source: *Vielle and Walthery, 2004, p. 85*

The frame *Employability* plus *Short-term* shows fixed-term contracts as 'second status'. Switching to the *Long-term*, the following step is not non-standard contracts, as you would expect, but 'personal project ... not necessarily immediately profitable' – *id est*: a trade-off.

Also, the frame «*decommodification*» appears untrue. Switching from *Short-term* to *Long-term*, the frame shows benefits, such as pension, not linked to work (e.g. flexibilisation), linked to disability, but not linked to long-term unemployment.

Thirdly, flexibility means many different things – sometimes opposite – depending on who speaks and when or where she speaks. Yet, the followers of flexicurity are used to treating its meaning as if it were unique.

For instance the table 3 below about the sociological approach explains very clearly what are the typologies and various forms of employment contracts and work flexibilisation, e.g. as in table 1.

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staying employed and better protect their income and employment over the life course. On the one hand, the increasing proportion of flexible employment contracts implies that workers have more opportunities to realise their working time preferences. On the other hand, the spread of flexible contracts may just mirror the unfavourable employment prospects for people for whom flexible contracts are second-best solutions or substitutes for a permanent employment contract.'; and p. 13 'Furthermore, it can be assumed that, in many cases, working time needs are not stable over the working life but might change due to people's changing personal and household conditions, their increasing age or changes in financial situation and individual preferences.' And so paper-course! At the same, about many many others sociological and economics studies. See, footnote at p. n. 27/13, for references.

**Table 3**

	Internal labour market	External labour market
Quantitative or numerical	<b>Flexibilisation of working hours</b> Part-time work plus variations Overtime Second and third job	<b>Flexibilisation of contracts</b> Temporary agency work Casual job Temporary job On-call labour Hourly contract
	<b>Flexibilisation of working time</b> Shift work (day) Variable working times (day) Weekend work (week) Flexible working time (year) Working time accounts (short, long-term) Career breaks, parental leave, other (life course) Flexible pensions (life course)	Insourcing and outsourcing Work as (sub)contractor Homework Labour pooling
Qualitative or functional	<b>Flexibilisation of labour input ('employability')</b> Occasionally employed Multi-skilling and multi-tasking Task and job rotation Task and job enrichment	<b>Flexibilisation of labour force</b> Knowledge worker Detachment of workers Freelance work Advising/consultancy work

*Source: Muffels and Oth. 2008 (partly derived from Ester, Muffels and Schippers, 2001)*

Table 3 in spite of one important assumption of flexicurity, according to which ‘workers have more opportunities to realise their working time preferences’, shows that flexibility works only on the side of employers. As it can be seen, the table shows many ways and combinations of flexibility, but nothing regarding security.

### *Security*

The second terms of the balancing, according to the flexicurity model, is not less problematic than the first. On the contrary, security is much more problematic and important compared to flexibility.

It is more problematic because security’s ideals, models, and concepts are very different among countries; but especially because security is not free, and indeed it can be very expensive.

It is more important, because it underlies labour market’s rules relaxation; so that without it flexibilisation might not be possible. Likewise, security plays the role of a parachute, so that bystanders are not alarmed themselves from the fall from the Olympus of job security into the magma of employment security.



Really, the connections between flexibility and security are shown in Table 4

**Table 4**

**Flexibility and security nexus**

Flexibility-security	Job security	Employment security	Income security	Combination security
Numerical-external	X*	X	X	X
Numerical-internal	X*	X	X	X
Functional				
Wage or pay flexibility				X

\*Job security is partially covered since only information on occupational status and changes therein is available. However, workers might change jobs without changing occupation.

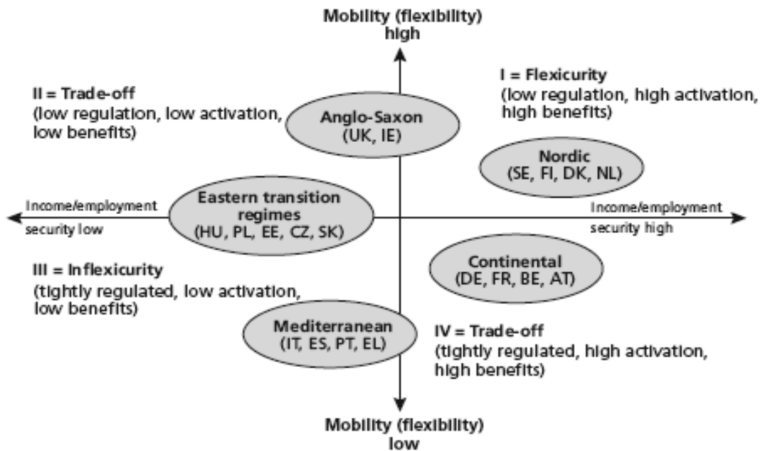
Source: Muffels and Oth. 2008

However, the matrix does not show how security works in flexicurity, but it only show where security is needed.

Consider the graph in figure 1, where the sets are security's systems, the axes are flexibility's system, and the co-ordinates are flexicurity.

**Figure 1**

**Welfare regimes and flexicurity**



Source: Karppiner - Buschack derived from Muffels and Luijckx, 2006

This graph is an example of how it can be made an oblique use of correct data. The sets are correct and depend on an old classification of security social systems according respectively to the role of households, social insurances, private insurances, citizenship, widespread distribution of benefits, such as education, healthcare, unclassifiable systems (e.g. Eastern regimes), and a mixtures. The four quadrants (I, II, III, IV) are default values<sup>43</sup> The coordinates are instead absolutely arbitrary. Let us consider some examples.

In the Nordic set, four countries have been included: Sweden, Finland, Denmark and Netherlands. Yet, if it is true that they have very similar social security systems, it is equally true that they have very different labour law regulations. For instance, Sweden and Denmark have opposite regulations of dismissal<sup>44</sup> - the first does not have low regulation. Moreover, a similar conception of welfare does not mean similar conception of flexibility and - consequentially - of flexicurity.

Let us consider Sweden once again. In Sweden, all employees are covered and all workers are employees. As a paradox, the highest flexibilisation consists, at the systemic level, in the enlargement of the concept of employee without any deregulation.

Sweden labour law has 'a uniform personal scope: - with few exceptions only employees are covered; - with few exceptions all employees are covered; - no third category/tertium genus' (ENGBLOM 2008). Indeed, they use the typological method to enhance workers' protections, and all personal works are made by an employee. So, 'width and flexibility has saved Sweden from controversial case law limiting the scope of labour law to the extent of leaving categories in need of protection outside. Professional employees with a high degree of autonomy are considered employees despite a low degree of subordination. Persons with short term contracts are considered employees, despite a low degree of economic dependence. The need to extent labour law to excluded groups of autonomous or semi-autonomous workers has been. No single factor is a necessary or sufficient criterion – not even subordination. Economic dependence can compensate for a low level of subordination. Subordination can compensate for a low level of economic dependence.' (ENGBLOM 2008)

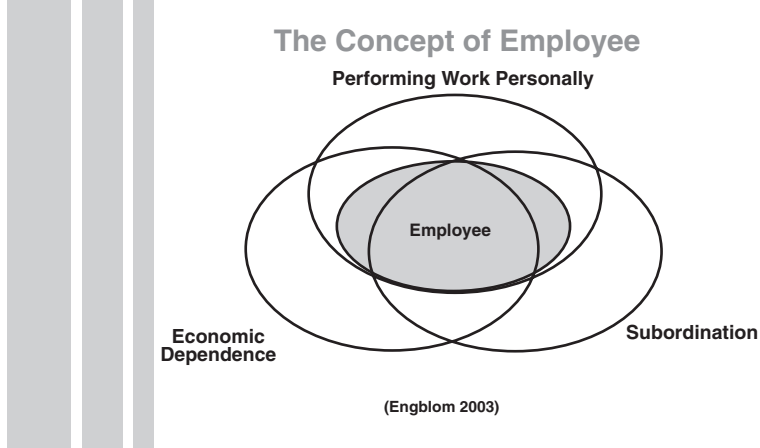
See graph below <sup>45</sup>

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43 Pessi 2005a.

44 In Italian literature see Roccella 2006.

45 Source Engblom 2008.

**Figure 2**

Source: Engblom 2008

In the Continental set, have been included other four countries: Germany, France, Belgium and Austria. For this set, also, if it is true that they have very similar social security systems, it is equally true that they have very different labour law regulations - for instance, France and Germany dismissal law is very different. France has weak dismissal rules, but Germany has it strong.

In the Mediterranean set, have been considered Italy, Spain, Portugal, and Greece. Now, if it is true that they have very similar concepts of family's role in the social security system, it is equally true that they have very different labour law regulations - for instance, Italy and Spain in terms of dismissal and fix-term contracts regulations). Italy has strong dismissal rules, Spain has it similar France. Fix-term contract is substantially free in Spain, but it is whole not in Italy.

Italy, Sweden, and Germany have similar regulations with respect to dismissal – yet, all are in different sets and frames of flexicurity.

Finally, let us consider the mobility axis. One meaning among the many is that of geographical mobility. Considering the different square area, shape and demographics, and customs, for instance, of Ireland, Italy, Sweden, Denmark (without Greenland, of course), and not considering Luxembourg (!), the index becomes intrinsically absurd. Last but not least,

the survey that presents that graph does not consider Italy and Sweden<sup>46</sup>. Yet, Italy and Sweden – although different – are two countries with two important systems. Sweden has one of the most widespread, effective and efficient welfare regimes; Italy has one of the most ancient and largest labour laws. Both countries have a significant impact on the issue of flexicurity.

So, despite the ‘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 synergy: 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. At the same time, the latter should be an underlying prerequisite for sustaining high levels of flexibility’ (Wilthagen and Tros, 2004), surveys and reports omit considering the three fundamental issues to achieve credibility – the point of balance. Such transition from job security to employment security entails a trade-off<sup>47</sup>: 1) how much job security is «off»; 2) who will pay for employment security «on»,<sup>48</sup> 3) whether job security «off» and employment security «on» are equal. If not, how smaller is flexicurity’s security?

Let us consider once again the graph in «figure 1» with respect to the trade-offs, remembering that it is a Cartesian graph, where on the *x-axis* is mobility (along flexibility), on the *y-axis* is security (along income/employability). As it is known, in all Cartesian graphs the relationship between the meanings of (*x*, *y*) in the four quadrants are: in the first (I) positive/positive; in the second (II) negative/positive; in the third (III) negative/negative; in the fourth (IV) positive/negative.

Consider now the orientation of the axes: N/S positive/null/negative, flexibility; E/O negative/null/positive, security. For example, if the orientation of the *x-axis* is inverted, a low level of flexibility becomes positive, and a high level of flexibility, obviously, becomes negative.

So, the positive relationship of flexibility plus security will be true depending on the value given to flexibility. In other words, the graph (in figure 1) does not show the virtue of flexicurity<sup>49</sup> (*id est*: flexicurity plus security equals balance), but it shows flexicurity according to the pencil of the designer. Similarly, for the trade-offs in quadrants II and IV.

46 See, e.g. [http://ec.europa.eu/employment\\_social/emplweb/publications/index\\_en.cfm](http://ec.europa.eu/employment_social/emplweb/publications/index_en.cfm).

47 See, MUFF-Oths 2007.

48 See p. 39.

49 Criticize this Roccella 2006.

Whether you consider table 1 (Wilthagen matrix) and Figure 1 depending each one another, you can observe two natural conclusions. 1) In the Wilthagen matrix it is implicit that the trade-off caused by movement of the point of balance must be made up for losses. 2) In figure 1, the trade-off (II) is better than the trade-off (IV) – since the first is a positive/negative relationship, and the second is a negative/negative. Only one difference exists between trade-off (II) and trade-off (IV), low and tight regulation respectively.

Q.e.d.: flexicurity cannot resolve by itself the trade-off problem.

### *Balance*

Last, but not least, in this section we consider some risks of the philosophy of flexicurity. The choice among systems is neither neutral nor technical. In other words, changing workers' protection from job security to employment security is not a zero sum game<sup>50</sup>. Even if it could be considered zero by a particular set of workers', it would have some implications on the whole system or for other workers' categories.

So, the change in perspective on security's contents is not an effect induced by labour, but it is an effect induced by the role assigned to labour market's rules<sup>51</sup>. These two different perspectives are described below.

Job security protects workers from the market by labour law and social security. In this case, as known, rules are intended to put the highest level of protection against anything. The law framework is given and the market efficiency cannot play any role to modify it<sup>52</sup>, since the way to make policies is law and law is not omnipotent.

In employment security the market is protected from labour law by employability. Conversely, in this case the market is like an engine and the legal framework and its rules - labour law and security social included – must serve to enhance market efficiency<sup>53</sup>. Yet, this assumption cannot work in *the first community*<sup>54</sup>, where law is in force. Here, indeed, when the goal of equity involves considering the rights of the

50 As seen above this is depending by axes orientation. Their orientation is simply a choice.

51 See above Table 1 Welfare regimes ad flexicurity.

52 For instance, as would have been by inversion of y axis' orientation in figure 1.

53 Figure 1 as it is.

54 Zoppoli 2007. *First community* mean whole wide declared work; hence, if undeclared work in too widespread it is a *second community*.

person; in accordance with supreme sources, efficiency succumbs.

Despite 1.1 ILO of Declaration of Philadelphia in 1944, in accordance with the quip *Labour is not a commodity*, workers become simply supply, like anything else in the market<sup>55</sup>. Because in the labour market the invisible hand has never worked – and perhaps will never work – flexicurity (as in figure 1) involves security as a medicine against market's casualties<sup>56</sup>.

Consequentially, the alternating of workers between standard and non-standard employment, unemployment, inactivity over the life course, is physiological by employment security, as it is pathological by job security<sup>57</sup>. This influences widely and deeply the concept of security benefits.

Eventually, this kind of security changes its essence without changing its appearance; so, flexicurity regresses merely to the meaning of social peace from the meaning of social justice, decent work and life, and freedom, as if it depended from efficiency, rather than the other way round.

Of course, these are all policies. Although, we cannot in any way change it on our own, still we can criticise it; we can break it down; we can verify whether it is in accordance with Constitutions and Treaties; we can search for its intrinsic coherence and we can suggest some changes.

In particular, even whether we disagree with the philosophy flexicurity, even whether we prefer the Wilthagen matrix (Table 1) to the graph of MUFF *et al.* (2007) (Figure 1), we shall investigate the relationship both between flexicurity's degrees of equity with respect to fighting undeclared work, and with respect to the degree of competition between atypical contracts and a standard contract.

We discard the free trade and free trade-off hypothesis and consider the Wilthagen matrix (Table 1). Accordingly, security must be so wide and efficient to be able to remove trade-off quickly and fully. Otherwise, flexicurity become like 'second community'.

As we have seen above, the new framework of flexicurity does not provide an answer to the question 'who ought to pay for employment security «on»?' We shall try to give an answer, among the many possible, by the same framework of figure 1<sup>58</sup> to search whether or not other tunings are possible.

55 On theme, also as perspective by economist see Stiglitz, 2002.

56 Also economist disagree on this, footnote above.

57 One can say that if they weren't fully balanced, they would be pathological in Wilthagen matrix, as well.

58 See above p. 12ss.

### **Flexicurity's tail side**

So far, shifting from job security to employment security has been seen as a mathematical equation where qualitative switching was from job to employment and quantitative switching towards greater security. Yet, this equation is correct only in part, and it does not a zero sum game.

When you change by one degree of flexibility into «job plus security», the change with respect to security is for the most part quantitative. Equally, if you change by one degree of flexibility into «employment plus security». Because in both cases changes occur inside the first term of the given hendyad .

When, instead, you switch from 'job security' to 'employment security', the change is about security and it is for the most part qualitative, because, for instance, the transition becomes from employment to self-employment or unemployment. That means to change the system of security.

Consider, for example, Italian system and assume a transition from employment to one of the following: quasi-employment, self-employment, undeclared work, unemployment, or gradually from one to the others.

The security inherent in the relationship of regular employment, namely that of the *first community*, is a in balance, by normative statement. Yet, even within the employment exist qualitative and quantitative security distinctions; - for example because of the number of the company, of the its territorial articulation, of the nature of their business.

Conversely, undeclared work, namely the *second community*, is given without security and therefore completely unbalanced.

The work of flexicurity can be realized into the type or through one or more transitions between types.

As example of first hypothesis can be considered an intervention of flexibilisation of the working time. It will find a level of compensation through an extra payment or through the compensatory rest. In this case, changes of the two main obligations of the contract, namely labor vs. pay, and therefore we have a quantity.

As an other example can be considered a change of regime of dismissals through the outsourcing of the businesses of the employer.

This the paradigmatic case of the theology of flexicurity when considers the *outgoing rigidity*.

It proposes to replace the restrictive rules of dismissals with generous welfare measures and active employment policies. In a word, it is proposed to replace the stability of the “job”, offered by dismissal rules, with ready “replacement” of “job”. Even in this case the relationship between rules of protection against dismissal and security regulations in the market is put as a quantitative rule. Yet, the argument, admitted that it can be demonstrated, start from a wrong assumption: that the real protection against dismissal individual is a measure to maintain employment.

D’Antona<sup>59</sup> has finally demonstrated that this is not the main value of the protection against individual dismissals. Instead it is a rule of closing the system of worker protection legislation, to ensure that the individual rights of the person in the report are exercisable in practice, and avoid that they are transformed and result in many cases damages in cash, relationship long course.

So, you cannot consider two communities any more – legal and illegal – but many communities,<sup>60</sup> each with its rules and its degree of flexibility and security. However, in the Wilthagen matrix, mobility, e.g. flexibility of flexicurity, becomes mobility among communities. So, security, to beat the trade-off due to the transition between communities becomes the goal of the flexicurity community and not of one single category or of one single class, or of a specific community (employees’, self-employees’, etcetera)

Of the remaining cases can be considered different examples. In the transition between employment and quasi-employment, assuming that changes only the type, and that this is provision basically uniform, however, the transition leads to a qualitative change.

The “flexibilised” not lead a employment relationship or restrict the application of the final term. That will determine the free dismissal. In addition, in quasi-employment pension contributions are calculated at a rate lower than normally, and fees are significantly lower than those of salary. Moreover, assuming further transition to unemployment, quasi-employee not entitled to benefits for unemployment, something that would have been entitled if the transition in the state of unemployment had been from regular employment.

During the relationship, the quasi-employee is not entitled to be-

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<sup>59</sup> D’Antona 1978.

<sup>60</sup> The regular is irrelevant. Because does not concern the level of security, but sum of insurance period only.



nefits for the protection of the disease, and benefits far below those for motherhood and fatherhood and so on.

This ablation of security is in no way compensated for the number, because the labor market is still essentially a monopsony in which the determination of fees of the quasi-employee is totally insensitive the large degree of flexibility of the type is related to its low qualitative level of security. So, paradoxically, increase flexibility does not match any degree of security even in terms of increased compensation to reward private forms of social security.

The phenomenon of jeopardising of social security increases further when the transition is to undeclared work and there reaches its peak.

In all the examples considered, except for those on working time, each transition resulting in a growing benefit economically homogeneous, in varying degrees in each type without the flexibility that it corresponds to a “new” point of balancing the security.

Eventually, it is clear that that the rules of security’s financing are different among communities, with the paradoxical result that the trade-off increases rather than decreases. This is the flexicurity’s tail side.

Let consider now the particular structure of the social security system. Into it is not always easy to distinguish between social insurance benefits and welfare provision, because the insurance benefits are very often integrated, even considerably, by welfare benefits. They are not also kept separate one another, and they are added to the first and are physically allocated to the social insurance system, In fact, they are financed, directly or indirectly, by the social insurance system. This last, however, is largely financed by revenue of employment.

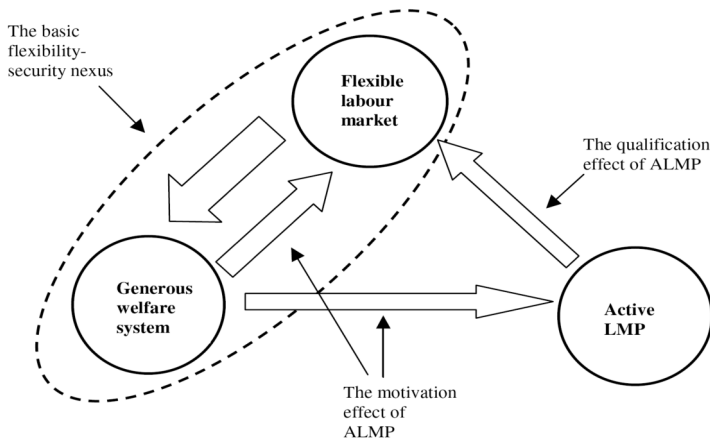
Proceeds that the employment must increasingly take on the growing financing needs of security, which performs the functions of assistance, namely social security for those forms of employment other than employment. They increase the gap, in terms of labour costs among the various communities (each of which corresponds to a type of employment). How much greater flexibility through a transition, as the possible benefits of balancing security is placed at the expense of the first communities more secure by definition, and that it has not jeopardised secure.

Unlike the case in which the social security system is built and

financed in a way that is “precondition” for the work of flexible policies. A model in which the security do not depend on nor legally or financially, by legal type of relationship for the use of labour; instead it will be uniformly and equally incumbent on the basis of need.

The structure is that of the Danish model, shown in Figure 3, below.

**Figure 3**



Source: Wilthagen - Tros 2004

The operation of this simple mechanism (the golden triangle), how can find the table 5 below, is made possible by funding a substantial and largely public, even when compared with countries with advanced welfare (Sweden) and flexibility thrust (UK).

**Table 5**

Percent of GDP	Denmark	Sweden	UK
PES and administration	0.12	0.3	0.13
Labour market training	0.86	0.29	0.04
Youth measures	0.1	0.02	0.15
Subsidized employment	0.17	0.26	0.02
Measures for the disabled	0.34	0.5	0.02
<b>Total active measures</b>	<b>1.59</b>	<b>1.37</b>	<b>0.36</b>
Unemployment compensation	1.37	1.31	0.44
Early retirement for labour market reasons	1.67	0.06	0
<b>Total passive measures</b>	<b>3.04</b>	<b>1.37</b>	<b>0.44</b>
<b>Total expenditures on labour market policy</b>	<b>4.63</b>	<b>2.74</b>	<b>0.8</b>

Source: OECD (2004): *Employment Outlook 2004*, table H.

Obviously, the possibility that the toy functions not imply any assessment as to the quality of results. Theme that is in large part outside of our study.

It will be useful to consider synoptic (in Table 6 below) it is varied both in composition and quantity both for expenditure to finance various social security systems in some EU countries.

**Table 6**

Table 3.2. **Net replacement rates and unemployment insurance benefit duration in 26 OECD countries, 2004**

	Initial net replacement rate <sup>a</sup> (percentage of net earnings in work)	Unemployment insurance benefit duration <sup>b, c</sup> (months, equivalent initial rate)	Average of net replacement rates over 60 months of unemployment <sup>d</sup> (percentage of net earnings in work)
<b>English-speaking Europe</b>	<b>51</b>	<b>11</b>	<b>11</b>
Ireland	49	15	64
United Kingdom	54	6	53 (-1)
<b>Nordic Europe</b>	<b>71</b>	<b>34</b>	<b>34</b>
Denmark	70	48	70
Finland	70	23	65 (-9)
Norway	68	36	58
Sweden	75	28	63
<b>Central western Europe</b>	<b>70</b>	<b>18</b>	<b>19</b>
Austria	63	9	57 (-2)
Belgium	61	No limit	61
France	75	23	57 (+4)
Germany	69	12	66 (-3)
Netherlands	74	24	66
Switzerland	77	24	69
<b>Southern Europe</b>	<b>65</b>	<b>16</b>	<b>16</b>
Greece	55	12	35
Italy	54	6	22 (+2)
Portugal	83	24	68
Spain	67	21	49
<b>Eastern Europe</b>	<b>55</b>	<b>9</b>	<b>9</b>

a) Initial net replacement rate is an average of cases of a single person and one-earner married couple, an average of cases with no children and with two children, and an average of cases with previous earnings in work 67% of average production worker (APW) level, 100% of APW level and 150% of APW level. Typical-case calculations relate to a 40-year-old worker who has been making contributions continuously since age 18. Net income out of work includes means-tested benefits (housing benefits are calculated assuming housing costs are 20% of APW earnings) where relevant but not non-categorical social assistance benefits. Taxes payable are determined in relation to annualised benefit values (*i.e.* monthly values multiplied by 12), even if the maximum benefit duration is shorter than 12 months. See the source for further details.

b) Duration is shown as zero for Australia and New Zealand since they do not operate unemployment insurance schemes. The net replacement rates in the first column for these two countries reflect means-tested unemployment benefits which are not subject to a time limit.

c) Months equivalent initial rate for the Czech Republic, the Slovak Republic and Spain where the benefit level declines during the UI period (*e.g.* for Spain, where the nominal replacement rate declines from 70% to 60% after six months, the months equivalent initial rate is calculated as six months plus 6/7ths of 18 months).

d) As note a) except that the net replacement rates are averaged over five years of unemployment, the three previous earnings levels considered are 67%, 100% and 150% of the average wage (all workers), and non-categorical social assistance benefits are included in out-of-work net income. Values in brackets are percentage point changes between 1995 and 2004, which are only available for a small number of countries. Data for Korea and New Zealand correspond to 2001.

We view this as the first summary regarding the composition of financing the Italian social security system, but can extend to considerations other contexts with similar national expenditure, it is interesting to note that the system took a term of comparison is characterized, at least for two data not exportable: the almost total absence of submerged in a social and territorial homogeneous and of small size. Despite this enormous amount of resources needed to balance flexibility shall bear the public burden on general taxation. In this way the cost of flexibility, although imperfect way to the aims that we propose in this work (below p. 43), is also distributed on who you use flexibility.

Understanding the economic effect of this perspective, will help us finding the legal basis of a widespread system of financing, which, in our opinion, has been assumed, although implicitly, by the Wilthagen matrix.

*Framework in an economics approach.*

Abuse in some Members States in the trend of flexibilisation, without a strong policy on security at the EU level, should be studied according to both the economics and the law perspectives.

Indeed, the real fundamentals of flexibility (one of the two terms of flexicurity) are efficiency and competition - both economic terms. This product a loss of equity at system level. The compensation for the loss of equity is the illusion of a virtuous trade-off between flexibility and security, i.e. between efficiency and equity - one would like to balance more flexibility with more of alternative indeterminable measures of security<sup>61</sup>. Does this assumption ignore equity as an endogenous factor of flexicurity, as suggested by the Wilthagen matrix? We do not think so.

*An epistemology disclaimer. (How can dialogue the economics and law points of view)*

Is the economics perspective a betrayal of the law method? Is it an epistemological infringement? Whether it is or it is not, it depends on both its roles and uses. In our honest opinion, the lawyer who wish to

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61 Maybe is the trust as has been suggested?!

understand the real and empirical effects of the legal system using the economics tools, does not infringe her status. Not even if she just started from them her law investigations. Our position is outlined below.

Indeed, the economics approach can seem rather unilateral. It probably is if it is led by the neo-classic tenets and efficiency objectives only, as if efficiency were the sole goal in economics, and as if equity were not also a fundamental goal of economics, and as if economics were contrary to equity policies. The latter is the position of the classic 'law and economics' approach, but not ours.

Many economists admit 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<sup>62</sup>». Yet, in State of Right the eye of the beholder is the law.

Changing equity is changing the law. And this is the policy maker's role. Studying the meanings of modifying laws is the lawyers' role and so seeing whether it is in accordance with others laws.

Of course, changing the law is also changing equity. Therefore this is again the policy maker's role . But changing law to change equity or to adjust efficiency is different from the opposite, because in that case changing must be made in accordance with the default legal system.

Law, like economics, operates in a network - one cannot modify anything without considering the network effect. So, the mirror of the economist reflects the image of the lawyer. For instance, the changing of a matter of internal security, such as working time arrangements, could cause a loss of security - e.g. children care - even when it does not affect wages.

As well as economics studies 'help us avoid policies that sacrifice efficiency without any benefits in terms of equity', law studies help us avoid policies that dump equity as an unconsidered - or worst erased - network effect. Even when policies can appear virtually neutral or with the fewest equity's loss. So, if one had not also assessed the network effects, the balance between efficiency and equity could not work as it should and it would be unfelt.

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62 All quotes in economics this section are by Mankiw 1998.

Certainly, these network effects by law changes can be in turn assessed by economics principles, as well as the maintenance of network equity can produce other economics network effects. Accordingly, no master-slave relationship between them is useful. Neither law nor economics is master.

For these reasons, economics and law cannot work independently from one another (PERULLI 2008). Therefore for these same reasons the dialogue between economics and law, cannot be reduced to the *paradigma* of «law and economics» - yet, it must become a virtuous cycle of cooperation<sup>63</sup>.

For these reasons again, lawyers must not be scared of economics (ICHINO 2005). They neither must run away from the reasons of efficiency, nor they must build a wall against them or envelope into the ivory tower of their values, dumb (or worst) beforehand with respect to any economics' suggestion, and so deaf and blind for that is happening outside the tower (DEL PUNTA 2001).

Lawyers could enter into a '*new alliance*<sup>64</sup>' with economists; and so they could together move towards the common goal of the safeguard of human beings' - around the human person in its whole. If so, these are the starting points of a new cooperation between economics and law - even at the expense of efficiency<sup>65</sup>. Indeed, this would not just be an illusion - because human beings' safeguard is already in itself a benefit of equity<sup>66</sup>.

If so, lawyers will want to use some of the tools of economists to improve their knowledge of the real effects of the laws, especially with respect to the issue of whether or not they are those expected.

So, for instance, they could use just some of those considered in this paper: such as externality theory, tax distortionary effects, and so on, in the end, lawyers can exploit these useful tools without betraying their original mission, on the contrary of economists who make normative statements. Indeed, if it is true that when you hear an economist making normative statements, you know they have crossed the line from science to policy making, the same is it not true for lawyers. Because lawyers' normative statements are - indeed must be - related to Constitutions and Treaties and are made in accordance with them.

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63 See above p. 3

64 The quip that we do our was by Perulli 2008 p. 136.

65 On the opposite, both in law and in economics. See Stiglitz 2002, Supiot 2001, Pessi 2005.

66 See, e.g. Mankiw 1998 p. 26 about normative statements and how positive and normative statements may be related.

*An economics reading of the policies of flexibilisation by normative statements*

The normative statements that we shall now consider are: articles 31 - 34 of the Nice Charter. According to article 31.1, 'every worker has the right 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. According to article 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'. Consequently, a degree of security must be provided by legal rules. According to article 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 can also consider article 34.3, according to which it must be recognized and respected the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources. Consequently, there is a relationship between the economic system in which the flexible labour product is exchanged and the work it has produced. So the first, in its entirety, rather than job security system, must be charged of the security needs to operate flexibly.

In the economics perspective, these rights are public goods; reaching a reasonable level is an equity objective. Consequently, the impact of employers' actions on the welfare (or well-being) of bystanders is an externality either negative or positive. If the effect on bystanders is either a financial reduction or a security reduction, then it is a negative externality.

Accordingly, we can consider as externalities, for instance, the effects of two actions: the transition from the *first community* to the *second community*<sup>67</sup>, and vice versa, and the transition from *job security* to *employment security*, and vice versa.

In the first example, if transition is from the *first* to the *second* community, the externality will be negative, and it will be positive in the opposite direction. These externalities impact at the micro-level on the other workers and companies («meso» level) and at the macro-level

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67 See above p. 9 Or else transitions, between one to another community.

on the financial and social security system by revenues reduction.

The second example of transition works in a similar fashion. The only difference between them is in terms of the size of the externality.

Indeed, in both examples externalities affect the financing of social security, since the main relationship is between (declared) wages and financing. In a functional analysis, it is not very relevant whether the first action is illegal and the second is not. Both damage the financing of social security.

Hence, a «decent» social security system is a 'social good' that can be considered as public good – and indeed it is. Better, we can consider security a public good – even that inside and around flexicurity.

Indeed, this assumption introduces a partial change of perspective. On one hand, it enlarges the concept of 'social good' to perfectly overlap that of public good – because 'social goods' should not only be produced to help the poorest or the neediest - and together with the social insurance system, they should work as one. On the other hand, in the flexicurity market, security becomes operating underneath it. So, security advantages everyone, and not one class or some classes only.

Eventually, we can say that 'all security' is a public good, but not because it is a *club good*, rather because security is a public good by itself.

It follows that, jeopardizing security means damaging the *social environment*, just like pollution does to the natural environment. Fighting pollution is a good policy - as it is equity. Reducing pollution is mandatory. Yet, what is pollution in a social environment? Undeclared work as well as flexibility are a form of pollution. The first it is to the highest degree, the second to a lower extent depending on both its width and its balance with security. Just like who produces environmental pollution ought to pay for the cost of its reduction, who produces *social pollution*, such as flexibility and undeclared work, ought to pay the costs of security, by the means of a *social security tax*. After all, the combination of articles 31 – 34.1 of Nice's Charter, delineates the EU system as a widespread, clean and pure social environment. Since we have considered social rights a widespread system, so its financing must be also widespread. At the same time, we think negative externalities of undeclared work can be more a cause rather than an effect of it.

Two matters have to be solved. On one hand, since by definition



undeclared work is undeclared, how can a tax be levied? On the other hand, since flexibility is legal, how much one should pay?

The two questions have only one answer. Each one gains advantages from externalities, although in different amounts, each one could pay proportionally to both the gained advantages and procured damages. One way to do it could be to disclose their effects<sup>68</sup>.

From undeclared work to standard work you can observe growing labour costs. (So also of the and internal security. As well as you can observe a decreasing of needs of external security.) One cause of it, amongst others, is taxation on work. In this way, social insurance taxes diverts the market towards undeclared work. Indeed, in flexicurity the larger is flexibility, the larger the need of security. Accordingly, the larger is security, the larger its financial needs. Therefore, whilst once, in order to achieve a given production it was impossible to escape the work-product relation, nowadays it is always cheaper to flee from the “structured employment” model towards incomplete labour structures or unprotected labour exploitation of work and workers. Once, it was unthinkable in the organization interests to exchange between completely different contract models such as those protected and those precarious. Now, in line with the very business interests, they are instead absolutely replaceable. However, they remain absolutely irreplaceable in reference to workers’ protection.

Consequently, only “decent work” - that of the employee - is loaded - with the weight of financing a widespread system of social protection. It becomes less and less competitive than precarious and exploited work. As such, it triggers a vicious circle, by trade-off between *first* and *second* community or - to a less extent - between *flexible contracts* and the *standard contract*.

If so, the financing of the social security system plays a decisive role on labour costs and on the subsequent localization choice of production, well beyond the equally significant differences in economic and regulatory treatments still widely present in the European context, especially after the eastern countries enlargement.

You can find significant differences in taxation burdens between EU countries, just with reference with the determination of the different “labour costs”, which can be exclusive of social burden. You can find more differences of “labour costs”, where there are different social

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68 See above p. 15.

security systems: each with its system of funding and protections. (See table 7).

**Table 7**

<i>Sources of financing social system by typologies (1999, in % on total of sources)</i>					
<i>Country</i>	<i>tax system</i>	<i>total</i>	<i>employers</i>	<i>employees</i>	<i>other</i>
UE-15	35,7	60,3	37,9	22,4	4,0
Svezia	48,9	45,9	36,3	9,6	5,2
Finlandia	43,4	50,0	37,2	12,8	6,6
Danimarca	65,2	28,5	9,2	5,3	6,4
Germania	32,8	65,0	36,9	28,1	2,3
Francia	30,4	66,8	46,5	20,3	2,8
Austria	35,0	64,3	37,4	26,9	0,7
Belgio	25,7	71,8	49,4	22,4	2,5
Paesi Bassi	15,3	65,8	28,4	37,4	18,9
Lussemburgo	46,9	49,1	24,7	24,4	40,0
<b>Italia</b>	<b>38,9</b>	<b>58,0</b>	<b>43,6</b>	<b>14,4</b>	<b>3,1</b>
Grecia	28,6	61,1	37,7	23,4	10,3
Portogallo	40,9	44,4	27,6	16,8	14,7
Spagna	26,8	69,2	52,2	17,0	4,0
Regno Unito	47,3	51,8	27,7	24,1	0,9
Irlanda	59,8	39,0	24,2	14,8	1,2

Source: Eurostat, 2000.

It is, then, possible to infer the importance that the harmonisation of the financing systems of social security of the member States with the harmonisation of protections for workers, their mobility and the movement of businesses. And this is all the more for those companies with high employment rates.

It is a paradoxical phenomenon. There is priority on the issues of employment and “decent work”, and all efforts are directed at harmonising social protections and extending work sans phrases (flexibility in flexicurity) rather than the issue of security itself. Following the pattern that makes protected work more expensive and therefore less competitive and less protected work more competitive, the divide between protected and exploited widens in disagreement with the lines set out in art. 31 and art. 34 of the Charter of Fundamental Rights of the European Union.

The hybrid pattern aims at neutralizing the contract model as a way of financing the social security system, unchanging fiscal pressure and total contributions. Then, a social total-security tax does not create

externalities, and on the other hand it can help internalizing externalities hitting those wages that create them.

### Hybridisms of system, pathways

The financial and the institutional situation among Member States, as known, is very different. Flexicurity's pathways do not exclude transferability of its alternative tools. Now, we suppose that a study about changing the Italian security's financial system can become a transferable 'idea'.

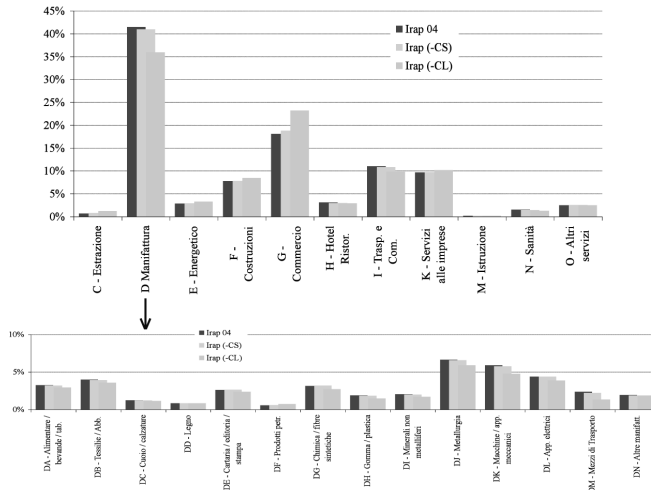
#### Starting points

We start by *ten matters* extracted from Italian law - evolution vs involution of Italian flexibility and security.

*Matter a)* The link between workforce and production has been broken<sup>69</sup>. *a')* the divide between them in ever growing.

**Table 8**

*Composition of revenue (IRAP) by economics sector (values %)*



Source: Oropallo – Proto 2006

<sup>69</sup> Even whether USA labour market is too much different respect, generally, EU. The 'secret idea' underlain flexibilisation is near USA labour policy. So, could be useful report a news from DELL Inc. This company in the 2007 revenue \$11,6 billion of profits. Yet, it predicts 9700 dismissals before the end of 2009.

We consider IRAP as good example, because, in the recent past, it has been affected by actions aiming at reducing labour cost. The tax base it considers is similar to that of VAT, but without the deduction of labour cost. As you can see in the upper part of table 8, the manufacturing sector pays the highest percentage of tax revenues. As it is implicit in the word, in this sector the workforce is larger than in others.

Reading the lower part of table 8, (the break down of manufacturing) the earlier observations have been confirmed: the higher the workforce, the higher the tax revenues. Except for labour cost, VAT and IRAP have the same tax base<sup>70</sup>, so labour costs, in a way or in another will be translated onto the price. As such, who produces less trade-off pays in place of who produces more. As it is intuitive, who is used to hiring undeclared workforce produces a huge trade-off that is dumped on enterprises with higher declared workforce.

*Matter b)* The discrepancy inside flexicurity cannot be fully overcome, because the two comparison terms are not perfectly replaceable.

Indeed, the most important part of work-protection rules is not employment or stability with their balance of corresponding security, rather security's facets, such as safety, human dignity, and in general decent work that cannot be secured if not inside job security. So, these cannot exchange neither one another nor employability nor security without sacrificing their ends. In this case, flexicurity does not work easily. It could betray its promises: flexibility's growing would have not decreased security, too. *b')* *Security's transition* from job security to employment security, needs fully replaceable protections between them. *b'')* Hence, the choices of workers and their need to change (a mix of them) several jobs, atypical contacts, self-employment, unemployment, inactivity over the life course should not be driven by protections of a particular kind.

*Matter c)* Some EU policies suggest reducing the impact on wage of the contribution and therefore switching levying from direct to indirect taxes in order to reduce labour costs. In this direction is our hypothesis<sup>71</sup>.

In accordance with EU rules on VAT and suggested policies, the social insurance tax is transferred over product; as such, everyone will

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70 See Lupi 2005.

71 Zoppoli 2007, Bellavista 2006, about COM (2008) and about Comm. (COM(98) 219 final already BER-CAR-RIC 2000; and also about IRAP Coppola 2007.

carry a social burden whether or not they have declared their workforce. At the same time, labour wage and its dynamics are freed from the burden of indirect costs, which limits somewhat collective action and bargaining.

*Matter d)* According to economics and social indexes, social burdens, including social insurance tax, are taxes. *d')* Public economics teaches that tax could have distorting effects in several ways. So, if one deals with security, even flexicurity, he will necessarily touch economics and prime the network effects<sup>72</sup>.

*Matter e)* Flexicurity policy has - among the many - two main needs. *e')* The first is to rise quantity, quality and the number of people reached by security measures. Whether it reduces - or hypothetically cancels - the labour market un-security degrees or it balances job security exchanged with flexibility. *e'')* The second are the revenue funds to carry out *e')*.

They can be gathered by many means. For instance, in Italy they have been gathered by levying - both directly and indirectly - workers income. Obviously, increasing labour costs, too. (Yet, see above *matter c)*<sup>73</sup>.

*Matter f)* There is a relationship between *a)* and *e)*, so that at needs' invariance and at rising GDP, social taxes on work income seem to rise. If social charges become insufficient, balance general taxation. Of course, this same effect recurs in *b)* as well. Consider, for example, the issue of pensions in Italy<sup>74</sup>.

*Matter g)* The framework shows how *matter f)* contradicts what seen at *c)* and causes *d)* as an effect.

*Matter h)* For instance in Italy, we observe that handicraft is going to vanish (with the consequent loss of identity, tradition and culture<sup>75</sup>), undeclared work, borderline work, non standard employment, exploited, outsourcing, either grow or are not reduced<sup>76</sup>. Because these kind of works do not pay or pay smaller social costs, probably the final result of the effects of *d), f), g)*.

<sup>72</sup> See table 7.

<sup>73</sup> For example, in Italy social insurance tax has grown between 1970 to 1998 of 4,3% (GIULIONI 2007).

<sup>74</sup> Due to time constraints, we can not discuss about "gestione dei parasubordinati" (A kind of quasi-employees, with their insurances system).

<sup>75</sup> See Artigianato, Leggi e regolamenti, - ARNIA - centro a.d.a. Palermo, Palermo 2001 pp. 39-49.

<sup>76</sup> Against, this reading Roccella 2007.

*Matter i)* Even if *h)* was only partially true, then the trade-off would be too much. It would be necessary to find a point of balance - and of course finance it - to reduce that trade-off.

*Matter l)* Obviously the perfect model does not exist. Maybe, no model is better than the other. It all depends on the aims (declared and undeclared), the choices one must take, the consequences one has to suffer and how much he has to suffer them, and many other factors yet.

### *The Italian model*

We will not argue about *flexibility*<sup>77</sup> rules in the Italian labour law. This matter is outwith our scope at this moment. On security, instead, some statements are necessary with respect to the proposed model.

As known, the most authoritative doctrine (PERSIANI 1973, 1987)<sup>78</sup> purposed the most modern reading of art. 38 of the Italian Constitution, among many others, with relationship among art. 2 and art. 3 of the same Charter<sup>79</sup>. As Persiani has demonstrated, it is more correct to call the system of social security without dividing it into social insurance e public assistance<sup>80</sup>. Consequentially, the terms of the relationship between risks and related benefits are deeply changed. In this doctrine, there is one risk<sup>81</sup> and one social security;<sup>82</sup> that is, differences among risks, accidents, benefits and in general protection regimes are not either ignored nor overcome nor neglected by him, but the perspective and the conception are greatly changed. The same way, we shall not consider any natural differences among benefits or among assumptions. Finally, we shall not ask ourself whether a benefit and the related sources obey either universal or not model.

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77 For all, at last, Zoppoli 2008.

78 Adde Balandi 1986, 1984.

79 We do not want demonstrate anything about this issue, neither add. This theory is the most near to EU flexicurity concept and become our starting points, also because and we agree with its.

80 Although this doctrine has many oppositors, and it was not followed by Courts, it is the more nearly to the concept of security underlain Wilthagen matrix and Wilthagen – Tros 2004 definition. Therefore, we shall keep it.

81 Persiani 1970, 1973 social risk agreeing with.

82 Persiani 1984, 1987 social security agreeing with.

*Our conjecture*

In first bar, therefore, we consider, as well as flexicurity studies (eg. Vermeylen - Hurley 2007), universal like widespread<sup>83</sup>.

In second bar, we shall not consider to change anything about subjective and objective assumptions in benefits, as well as in contribution over workers' wages.

On the contrary we think it must not change (except possible small adjustments).

What changes is the source - we suppose from employers to enterprises. Apparently, it seems as the maxim *cuius commoda eius incommoda*. Really it is the exact opposite.

As it has been discussed above, we assume commoda in flexicurity is in enterprises which use flexibility - therefore of the security too - both directly and indirectly. Indeed, who uses greater flexibility,<sup>84</sup> needs more security to leave intact the balance inside flexicurity. Because there is flexibility also in self-employment, the highest degree of flexibility will be when an employer outsources or relocates and subcontracts - for instance by self employers - all production, so that it will have simply an enterprise without being an employer. In this case, the relationship 'so many wages pay so many insurance tax pay' will be broken. Yet, it will be broken the flexicurity's balancing<sup>85</sup>, as well.

Hence, the substantial hybridisms of the conjecture consists in leaving all as it is, on the side of workers, benefits' assumptions, exchanging criteria to charge on the side of enterprises - towards the direction to charge work's results' value rather than wages.

In our example, employees that will have undergone a transition from employment to e.g. self-employment, - indeed former employees - keep the same wages, but not the same insurance tax.

This is typical way in which flexicurity works, employee - indeed former employee - yet needs security - indeed more security - (e.g. wages, social insurance taxes, etc), but none pays for it.

Directly or indirectly, the sources of financing former emplo-

83 And not necessarily according to Beveridge's theory.

84 To the ends right into 2<sup>nd</sup> community.

85 On concept of abuse of power to define employees, see Ales 2008.

yee's security will be paid by other employers who do not have broken the relationship 'so many wages paid so many insurance tax paid'. One question might arise: is it competitiveness or competition? We shall not try to give an answer at this stage.

Well, what would happen if all employers broke that relationship? Maybe, the system will have no insurance tax revenue any more. A natural second conclusion can be omitted, that is so obvious that flexicurity's theologians say: 'trust is a prerequisite of flexicurity'<sup>86</sup> (Wilthagen 2004).

If so, and so we read, the security from the reason of trust in the future became a reason of the trust in flexibility - a true heterogenesis of aims. Yet, on the trust issue, paraphrasing the Gospel according to Mathew,<sup>87</sup> you might say: 'render therefore unto Man the things which are Man's and unto Worker things that are Worker's'. Accordingly, just with trust, we cannot finance security.

As we have seen above (Figure 3, Table 5), the circular mechanism of auto-off between flexibility, welfare-workfare and work, is funding

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86 Vermeulen - Hurley 2007 use Denmark case as example, In fact, they write: 'One example of this is the fact that comparatively weak employment protection legislation in Denmark coexists with a high level of employment turnover: 25% of Danish workers change job each year. This is an accepted trade-off as there is a strong confidence in finding another, equivalent job in a reasonable amount of time, due to both the general economic performance of the country and as a result of Danish active labour market policies.'

Even if this is not quite place to discuss deeply/widely the suggestiveness example (as one should) we observe Denmark in too much different from all, by all, in all of the rest of the EU to doing it's - even only - an example.

Truly, that one is an example of the fact Danish people trust in their system. Yet, it is absolutely not an evidence of relationship between 'weak employment protection legislation' and high rates on employment. Moreover, 'a high level of employment turnover' sounds like an operation equal zero as it, but it does not seem as if an evidence of the fact a high level of employment turnover means more employment.

And so, they specify: '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 (This idea is a deepening/widening of the 'square of trust' idea as proposed by Ton Wilthagen, presentation at the Foundation Seminar Series, European Foundation, Dublin, May 2006.). Yet, add 'in order to create this society of trust, European systems have to be adapted to this new reality: social protection systems, labour market systems and social infrastructure'. Even if, at the end, they consider already - exactly - 'there is no 'one size fits all' solution for all which can be transferred readily from one country to another.'

Eventually, in our honest opinion, trust is - indeed cannot be - commodity, as this exportable, even less than work.

87 Mt. 22, 21



without connection to the labour relationship, so that the “labour costs” does not seem appreciably different in terms of typological flexibility. In a system so designed, the tax burden of financing of the system of social security widespread is not circumvented by use alternative contractual types. Whatever the tax system for financing the social security cost is charged on the price of the product or service, so it contributes to the entire community. The only way to escape would be the use of the undeclared work, namely illegal community, where the value is variously scored between under pricing and lower cost.

In this system of comparison, however, in a macroeconomic framework this is a phenomenon absolutely negligible. Instead, is more relevant that in this model there are not more flexible systems each with its competitive costs in terms of funding the social security system.

Where a rather large slice of the economy is the submerged and where various types of contract are different sources of financing, inversely proportional to security that they themselves have while the financing of social security remains a load of regular employment.

So, the second community takes advantage of the mechanism that identifies the first community that only one community upon which fall out the cost of the financing the security that themselves produces.

Hence, in the cost of the product or service there is a share that is subtracted, for a technical problem of tax, on the natural destination of financing the system.

Moreover, in the Italian system in question, where security are among each other enveloped, the funding system, that considers the remuneration of the first community as tax base, has a regressive effect in terms of the burden of flexibility.

However, one thing is certain: only people pay taxes. So labour costs, direct and indirect, are charged into the products' price. When you make the same product using less workforce or using flexibilisation, this increases the need for security and decreases the revenues of the contributions needed by social security.

*The hypothesis*

As outlined above, the true prerequisite for flexicurity is financial. Yet, the way to financially charge companies is a huge matter. Hence, security or trust, what is needed is money. Research establishes the basis for studying the effects of this shift of the source of funding: from taxation on labour towards taxation on products labour.

Summarizing.

A) In the flexible labour market all kind of workers are the same, as consequence of fact that all kind of employments are - by thesis - quality employments. So, protections will be indifferent to the underlying contract. If the contract provides the worker with a lower wage, security will give him difference. If the work contract stops and a worker becomes unemployed, security will give him subsidy and he will look for new employment. How much does all this cost? None knows it. Yet, it is sure that all workers will pay for it. Of course, workers' contributions will not be sufficient to finance security's needs. Indeed, there are many differences among countries, as it is possible to see in table 5. Table 6, instead, shows that where there is more workforce, there is also more contribution to security.

B) System charges the same fund of tax on employers and employees of the same employment in the same time (table 5). Even if this is not decisive<sup>88</sup>, it does not seem to work very well, because employers and employees both could collude to fraud and - easily - the worker might be exploited (SCARPELLI 2008).

C) The concept of contribution charge on the employee is similar (table 5) all over UE. Differences are strengthen politics and negligible (table 9). Indeed 'while the European social model is characterised by a diversity of national social systems, nevertheless, a number of shared values can be identified that define the model: universal access, solidarity and equality/social justice. These common elements have contributed to the development of a modern welfare state whose original objective was to mitigate the negative consequences of industrialisation. (Vermeulen - Hurley 2007).

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<sup>88</sup> GUE-ZAN 2006 - See also SANTORO 2006, according to this author, interests' contrast, does not a resolute tool in fighting against tax escape. Yet, it can become it, in connection with more controls and ethics behaviours.

**Table 9**

<b>2004</b>	<b>Tot. general Gov. revenue</b>	<b>Tot. general Gov. expenditure</b>	<b>General Gov. final consumption expenditure</b>	<b>Social security transfers</b>
	% of GDP	% of GDP	% of GDP	% of GDP
<b>Belgium</b>	49.3	49.3	22.6	16.0
<b>Canada</b>	41.7	41.1	19.7	10.4
<b>Denmark</b>	58.9	56.3	26.7	16.9
<b>Finland</b>	52.5	50.7	22.4	16.8
<b>France</b>	49.8	53.4	23.9	17.7
<b>Germany</b>	43.2	46.8	18.4	19.2
<b>Ireland</b>	35.6	34.2	16.0	9.2
<b>Italy</b>	45.4	48.5	19.2	17.3
<b>Japan</b>	30.3	30.3	17.7	10.9
<b>Netherlands</b>	46.2	48.6	25.0	12.3
<b>N. Zeland</b>	41.2	37.0	17.5	10.5
<b>Norway</b>	57.9	46.4	22.0	15.0
<b>Portugal</b>	45.4	48.4	21.4	14.9
<b>Spain</b>	38.4	38.6	17.4	11.7
<b>Sweden</b>	58.3	57.3	27.7	18.0
<b>Switzerland</b>	35.6	35.5	11.8	11.3
<b>UK</b>	40.8	43.9	21.2	13.4
<b>US</b>	31.9	36.5	15.6	12.0

*Source: National Accounts of OECD Countries, OECD, Paris, 2005.*

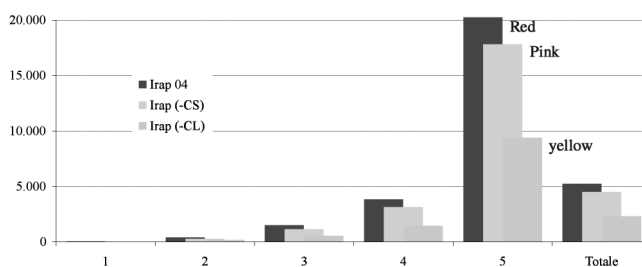
D) Levying on employers and general taxation to balancing the deficit shown above on A) are very different among countries. As there are many differences as for the subject who pays and measures payment (see table 5). This could cause competition at the security's level, jeopardizing the flexibility-security-balance. As we saw above, and as we shall see below, jeopardizing this balance can be considered as a negative externality.

E) It is the objective of our hypothesis to neutralize or decrease D), while maintaining C) strong .

To enhance security and to maintain a balanced flexicurity, we will now disclose the results achieved by the Oropallo - Proto's (2006, 2006a) surveys, we think need larger to redistribute social contribution among enterprises. On one hand, in order to balance the trade-off between flexibility and security. On the other hand, to remove the social externalities of the trade-off.

Let us considers table 10 below here:

**Table 10**  
*average Irap per quintile of companies list by A.V. per worker (€)*



Source: Oropallo - Proto 2006

Look at the 5<sup>th</sup> quintile.

Normally, labour costs are not deductible from taxable value in IRAP (red bar). The survey, as reported in the chart, makes the hypothesis to deduct either insurances tax (pink bar -CS<sup>89</sup>) or the entire labour cost (yellow bar - CL<sup>90</sup>). As you can see, the rate of reduction is much higher in the 5<sup>th</sup> quintile. This is the quintile that pays more tax, because it deducts less cost, i.e. the labour cost. If you compare the 5<sup>th</sup> quintile with the total you can observe a paradoxical effect: who contributes more to financing the social security system, and accordingly is less used to employing workers flexibly at the same for undeclared workforce, pays more tax. Observing the percentage reductions by de-

89 CS = Contributi Sociali, Social Insurance Tax.

90 CL = Costo del lavoro totale, Labour Cost (Includes wages, social insurance tax, accident tax, etcetera).

duction of labour cost, you deduct more is employment - such as less security's need - more pay.

Noteworthy, manufacturing industries (and it is possible to see better this in the set gone off below it), pay much more than all others (table 6).

Indirectly, Italy has experienced this. By Act 296/2006 (as known as 2007s financial act), the government reduced the '*cuneo fiscale*'<sup>91</sup> by acting on the social insurance tax. Technically, the way to obtain it, by many sums and subtractions from the IRAP<sup>92</sup> tax base was very very complicated<sup>93</sup>. Yet, our interest is about the principle and about the effects on households and on companies from the transition between systems of levying. These effects have been studied by Oropallo e Proto (2006, 2006a) with reference to greater or smaller deductions of social insurance tax or entire the labour cost from IRAP tax base. Now, because IRAP, VAT and labour costs are narrowly connected, we consider these surveys a good reason to maintain patency of our hypothesis.

How it has been seen above, the *transition* between *types* of flexibility or between the *first* and *second* community has a trade-off. 'Given the multidimensional nature of flexicurity, it is important to strive for an integration of different policy areas. A more coherent policy to tackle the issue, increased interaction between the different elements and between different policies (labour law, labour market policies and social protection systems) is needed to create sustainable employment and social cohesion' (Vermeylen - Hurley 2007).

Such as a mechanism of gradual transition from the various systems to a single system of financing, based on the value added of work (table8). This mechanism will be rewarding to those organizations that have high employment per unit of product, and - indirectly - proportionately more onerous for whom directly or indirectly determines social dumping as a result of their politics of containment of labour costs.

Indeed, in this it is a pre-requisite as has noted 'an important ele-

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91 In the same word: fiscal wedge, such as differential between labour cost e net wage.

92 Regional Tax on income by handicraft, service, trade, industry, etc. but not households. It is aimed - in much part - to financing healthcare.

93 See, about all, Coppola 2007.

ment 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 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' (Vermeyleen - Hurley 2007).

On one side, it is expected to act on the same tax base of VAT: increase in rate, or decrease in deduction of VAT "at the valley". (Taxation system that is in Europe already harmonised and among its main sources of funding.)

On the other side, it is expected to intervene on the tax base for the purposes of income tax: deductibility of higher variable costs increased from taxable income for the purposes of income tax. Wherein the percentage of deductibility determines the share of financing of social security for the work and that of non-deductibility share financing of social security to be borne by the general taxation.

The effects expected from the introduction of the hybrid system are consistent with the recommendations of the European Commission for the relaunch of the Lisbon strategy for growth and employment.

Indeed, the system produces these effects:

elimination of the tax wedge, with the consequent very close link between labour productivity, labour costs and the net pay; elimination of differences between member countries on how to fulfill the social burden: this makes it independent of the contractual shape for the use of the workforce and determines, thus, the increased mobility of workers and enterprises;

reduction of dark work, because it becomes much less competitive;

participation in social spending at the expense also of those who have relocated production, but who continue to operate in the common market, where they keep selling their products.

'There is no perfect way to do it, whether it is the 'Danish' model with more flexibility for all workers, or a more 'transitional labour market' approach such as the Dutch model in which people move in

and out of the labour market.’ (Vermeylen - Hurley 2007). The effect of our hybrids is the our way. It should introduce a virtuous cycle to reduce the gap in competitiveness between local production and extra E.U.

### **Provisional conclusions**

One can infer that:

social security can not be considered an internal variable of the balance of flexicurity, but it must be a systemic precondition to flexicurity work;

flexicurity is not in a position to eliminate the trade-off product from any point of balance;

therefore, exceeding the trade-off between internal and external security must be ensured in the system;

therefore, the political security can not be financed on the basis of trust in the dynamics of the market, but with real money;

their finding should not be a reason to turn trade-off between levels of protection because of both types, both because of the place.

Eventually, the financing of security, coupled with a degree of adjustment is also harmonized, is not an internal matter in every subsystem of flexicurity, but it is a priority objective of a decent social environment.

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94 Updated on oct, 2008.



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