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Publication date

2010

Document Version

Final published version

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Citation for published version (APA):

Schmid, G. (2010). *The future of employment relations: goodbye 'flexicurity' - welcome back transitional labour markets?* (AIAS working paper; No. 10-106). Amsterdam Institute for Advanced labour Studies, University of Amsterdam. <http://www.uva-aias.net/nl/working-papers/aias/2010/the-future-of-employment-relations-goodbye-flexicurity-welcome-back-transitional-labour-markets>

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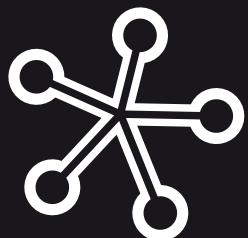
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The future of employment relations

Goodbye 'Flexicurity' –
welcome back transitional labour markets?

Günther Schmid



Working Paper 10-106

December 2010

Acknowledgement

I wrote this paper in relation to my visiting professorship on 'Flexible Labour Relations' at AIAS and SEO, University of Amsterdam. I am grateful for the comments I received after my presentation on 14 October 2010 – and especially those from my discussant Ton Korver – and to Nick van den Heuvel for his intellectual and organizational support.

December 2010

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Bibliographic Information

Schmid, G. (2010). The Future of Employment Relations: Goodbye 'Flexicurity' – Welcome Back Transitional Labour Markets? Amsterdam, University of Amsterdam, AIAS Working Paper 10-106

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The future of employment relations

**Goodbye 'Flexicurity' –
welcome back transitional labour markets?**

Günther Schmid

*Professor Emeritus of Political Economy
Free University of Berlin*

&

*Director of the Labour Market Policy and
Employment Research Unit
Social Science Research Centre Berlin (WZB)
from October 1989 to March 2008*

WP 10-106

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Abstract

Starting points are two contrasting perspectives: temp-agency work or civil service work as possible ideal types of future ‘flexicurity’ employment relations. This thought experiment clearly demonstrates, however, that neither the state nor temp agencies as employers can serve as a role model for future employment relations. The paper, therefore, contributes to the empirical and theoretical backdrop to an alternative. It begins by comparing the extent and dynamics of part-time, temporary and own account work in Europe. These forms of non-standard employment relations are spreading, however to varying degrees and depending on the national employment systems. Although empirical evidence confirms to some extent the thesis of erosion, the same evidence can also be taken as an indication of a still stable foundation of the standard employment contract, especially as the increasing variety of employment relations is concentrated on new jobs and among new labour market participants (women, the young, and other vulnerable people). As both empirical evidence and theory provide plausible arguments for the *raison d’être* of the open-ended employment contract as well as the need for its adjustment, the logical next step is to ask what new elements should be included in the legal or institutional design of employment relations in order to ensure the right balance between flexibility and security, which is the ultimate aim of all ‘flexicurity’ rhetoric.

The paper responds to this problem by suggesting a set of new institutional arrangements based on the theory of transitional labour markets, in particular the institutionalization of ‘active securities’ understood as legally guaranteed social rights to participate in decision making about work and employment and to share equally their fruits as well as their risks. The final section exemplifies the potential role of these new securities on the basis of two regulatory ideas: rights and obligations related to capacity building, and coordinated flexibility as functional equivalents to external numerical flexibility, in particular the model of short-time work. A brief summary concludes and reminds us that ‘flexicurity’, despite its resilience, requires more conceptual rigour.

1. Introduction

A provocative starting point in examining the complex relationship between flexibility, the related insecurities and the standard employment contract might be an obvious counter-model reflected in the following cartoon. Some employers tend to see the new standard employment model in this way. They would like to dismiss people at will by saying: ‘Who knows, perhaps we’ll see you again as temp-agency workers!’



An infamous example of such an employer is the German retail group *Schlecker*. It closed many small shops and rehired the workers through a dubious temp-agency firm, *Meniar*, which paid its workers 30 per cent lower wages than before and provided much less generous fringe benefits – like holidays and Christmas payments – on the basis of an even more dubious collective agreement with the *Christian Trade Unions*.

What does this case teach us? At least so much: In the meantime, *Schlecker* had to stop this practice as a result of strong public protest, and that from top government officials. The company had broken labour law or exploited existing or newly created loopholes. The main loophole consists in the provision of temp-agency regulation that permits collective agreements to deviate from the equal treatment principle, based on

the assumption that social partners negotiate on equal terms. This assumption is being contested in the case of CGZP due to its limited representation of workers, which led to a charge against that union.¹

The grey zone between lawful and unlawful practice, however, is still much too broad in Germany, and neither labour law nor industrial relations law has properly reacted to the increasing risks workers face in relation to temp-agency work. This impression is confirmed by a recent and comprehensive study carried out for EUROCIETI, which found, for instance, that Germany is the only country without special vocational training provisions for TA workers (Peeters et al. 2009).

It seems that regulations aimed at precluding the worst insecurities related to temp-agency work should meet the following conditions:

- Minimum wages, guaranteed by law and/or collective agreements.
- Legal acknowledgement of collective agreements through their extension to workers who are not covered by these (usually sectoral) agreements.
- Provision for accumulating rights to transitions to open-ended employment contracts within a limited period of time.
- Higher risks balanced by higher security provisions, for instance through higher contributions to social security or mandatory funds for training or employability measures.

The German legal framework does not satisfy these conditions. This is a pity. I would not go so far as Jelle Visser, whom I remember making the following provocative (probably ironic) statement during a panel discussion: *‘Temporary work agencies are the trade unions of tomorrow!’* There is little doubt, however, that temp agencies could play an important role in providing *employment security* as an alternative to *job security* by effectively pooling the risks related to economic ups and downs, or by effectively pooling the risks related to workers’ care obligations and continuous training needs. The potential of TAW is also still under-exploited as regards providing bridges or stepping stones for the long-term unemployed to get back to work, and as regards the increasing market for career services, as recent studies indicate (de Graaf-Zijl et al. 2009, Lehmer and Ziegler 2010). Yet despite these promising perspectives, this hybrid employment contract between temp agencies, user firms and temp-agency workers will be just one element and not the paradigm of the

1 As the government deregulated temp-agency work in the course of the Hartz Reforms in 2002/03, it was not expected that the competition between trade union representatives in the temp-agency sector would develop into a harsh power battle between unions under the umbrella of DGB (*Deutscher Gewerkschaftsbund*) and unions under the umbrella of CGZP (*Christliche Gewerkschaften Zeitarbeit und PersonalServiceAgenturen*). The charge against CGZP comes from VER.DI (a DGB trade union), and the decision is to date (September 2010) still pending. Fragmented representation on the employers’ side enhances this conflict (Vitols 2008).

new standard employment contract. In the near future, the firm that produces goods or services (other than personal ones) for the market will obviously remain the core institution of work organization.

So, why not go back to the good old days, when the *civil servant* was the prototype of ‘flexicurity’? This model clearly provided employment security *and* social security in the case of family formation, illness, disability or old age, *in exchange* for accepting a wide-range of *external* flexibility by demanding from the ‘servants’ to move with the jobs, and *internal* flexibility by demanding to move with the tasks. In addition, female civil servants were assumed to live in celibacy, which forced them to quit the civil service when they got married. The implicit social contract of this model was not only the man as the family’s breadwinner, but also the man as free from any other obligation to work.

Sure, this model would certainly be hard to sell today. However, since the abolishment of female celibacy and the enforcement of gender equality, the state as employer could be considered a model for a new standard employment contract at least in some respect. State employees in Germany, for instance, got the right to part-time work or to adjust their working time to life-course conditions long before such rights were established for all employees in 2001. The state was also the model for including the right to part-time work combined with parental leave in 2008, and state employers were also pioneers for concession bargaining that combines wage flexibility with employment security. Finally, civil service types of work will persist as long as exercising public duties in a neutral and professional way (and free of corruption) remains a building block of functioning democracies.

On the other hand, anecdotal evidence shows that actual flexibility among state employees is far from the wide range of requirements that were related to the original civil servant model. In addition, mobility between private and public sector is often discouraged, due to, for instance, the non-transferability of security provisions related to the civil servant status. Furthermore, civil servant-types of contracts induce insider–outsider cleavages, reflected in, for instance, the fact that the number of fixed-term contracts in the German public sector is twice as high as the national average.

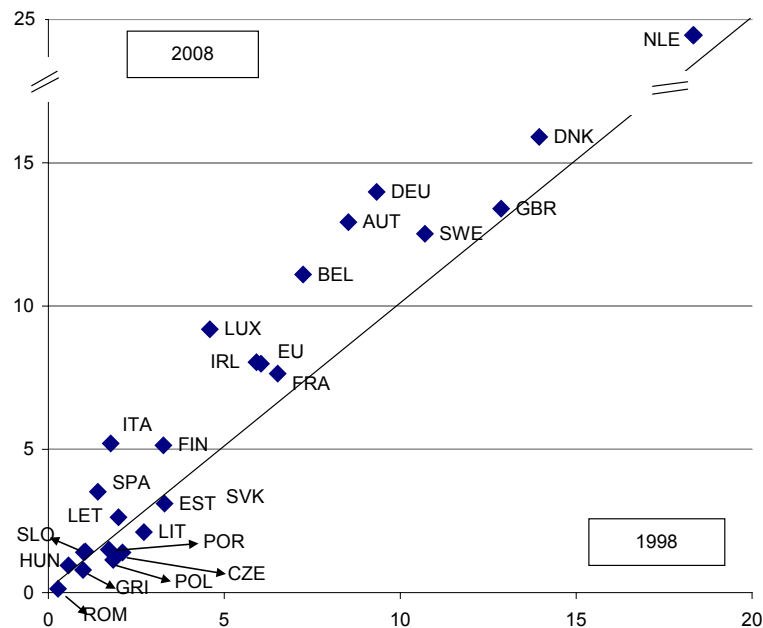
Thus, neither the state nor temp agencies can serve as a model for the new standards. However, before pondering on possible alternatives to the traditional standard employment contract, it might be useful to take a look at the actual contractual development.

2. Why do we need new standards?

There is plenty of evidence that the standard employment contract (understood as open-ended and dependent full-time work) is eroding: non-standard employment relationships are spreading, however to varying degrees depending on the national employment system. The following paragraphs illustrate this trend by presenting some stylized facts.²

First, the percentage of the working-age population having *open-ended part-time contracts* ranges in Europe from almost zero per cent (Romania) to 25 per cent (the Netherlands) (Figure 1).³

Figure 1: *Part-time employees (only with open-ended contracts, and excluding self-employed) as a percentage of the working-age population (15-64), 1998 and 2008*



Source: Eurostat, own calculations

Apart from the new EU member states, open-ended part-time contracts are on the increase. There is no point mentioning that it is mainly women who do part-time work, but it is worth mentioning that in more and more countries the number of male part-timers is becoming substantial; this is especially the case in the Netherlands. An established fact, however, is that part-timers face a penalty compared with full-timers in terms of pay, job security, training and promotion, and they have a higher risk of poverty and are less likely

² For more figures and data, see Schmid and Protsch (2009); Schmid (2010).

³ Notice that this way of measuring corresponds to the part-time employment rate in contrast to the usually presented share of part-time related to total employment.

to have access to unemployment benefits or re-employment assistance if they become unemployed. In the Netherlands – as the excellent case study on low wage work shows – part-time and especially small part-time, turned out to be the strongest driver for the expanding low-wage sector (Salverda et al. 2008, p. 60).

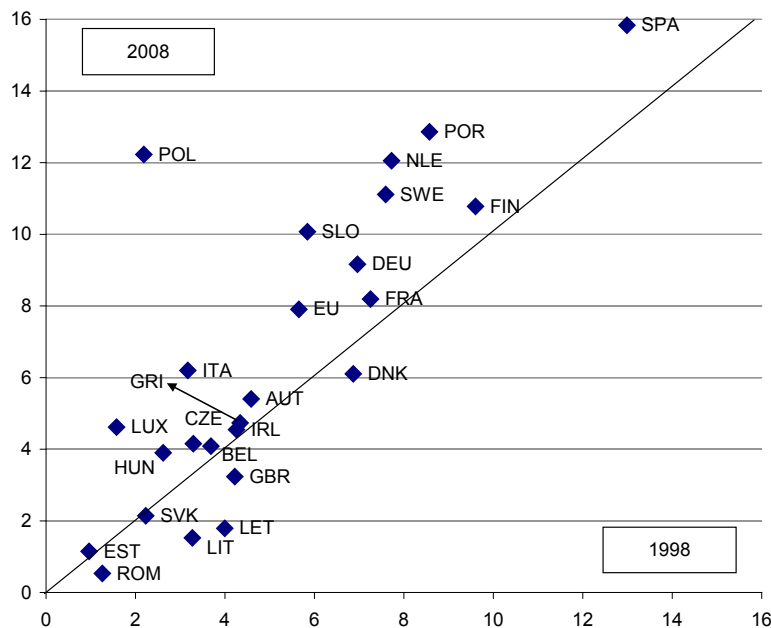
On the positive side, these disadvantages are partly compensated for by higher job satisfaction, a better work–life balance (especially family life), and better health and safety. Moreover, and most importantly, the quality of part-time jobs has not deteriorated with the large increase in their number: more widespread part-time work is associated with lower penalties in terms of wages, job and income insecurity, and opportunities for career development (OECD 2010).

Therefore, open-ended part-time contracts might be considered an element of the new ‘standard employment contract’ to the extent that they substantially contribute to household income through skilled work in the range of 20 to 34 hours a week and include options to move on to full-time work. The transition dynamics between part-time and full-time work is not yet well known enough to validate such a conclusion. Confirming indications are the fact that transition rates from part time to full time are lowest in countries that have high shares of part-time workers in total employment (correlation -0.76), and the retention rate over one year (part-timers still in part-time work after one year) also correlates negatively (-0.45) with the share of involuntary part-time work.⁴ The flip-side of the coin, however, is that transition rates to full time are lowest among part-timers who are low-skilled and poor, whereas the same group has the highest transition rate from part-time work to inactivity. Moreover, high part-time retention rates (like in the Netherlands, Germany and Belgium) might also reflect disincentives stemming from marginal effective tax rates or transfers to move to full time or to increase the number of part-time hours (OECD 2010, 246-249).

Second, the percentage of the working-age population having *fixed-term contracts* (including temporary part-timers and temp-agency workers) ranges in Europe from virtually zero per cent (Romania) to 16 per cent (Spain). The dynamic in the last ten years has been mixed, but most EU member states experienced a further increase (Figure 2).

4 The otherwise excellent study by the OECD (2010) is a bit confusing or at least indeterminate concerning this transition dynamics. The text, for instance, states: ‘On average, about 15% of part-timers take up or return to full-time employment each year, and slightly less move out of employment altogether’ (p.244), yet Figure 4.16, panel 1, indicates about 25% for the EU average. Unfortunately, these transition rates do not distinguish between temporary part-time jobs and open-ended part-time jobs, nor between high-volume part-time (e.g. > 20 hours) and low-volume part-time (e.g. < 20 hours).

Figure 2: Temporary employees (including part-timers) as a percentage of the working-age population (15-64 years), 1998 and 2008



Source: Eurostat, own calculations

Telling examples are Great Britain (GBR) and Denmark, which underwent a slight decrease. The reason for their deviation from the majority of the ‘old’ EU member states is that they have a moderate or low level of employment protection. The two countries are therefore counter-examples of the otherwise strong positive correlation between employment protection and fixed-term contracts, especially among men. Furthermore, fixed-term contracts, especially in the form of temp-agency work, are concentrated among young adults and are often associated with low skills and low wages. Although many make the transition to open-ended contracts, many others get stuck and become members of the new precariat.

Again, good and actual comparative data on transition rates are lacking.⁵ For Germany, for example, researchers observed that 63 per cent of male and 64 per cent of female temporary workers had open-ended contracts after three years (Giesecke and Groß 2007). A seminal study for the Netherlands found that although temporary jobs shorten unemployment duration, they do not lead to an increase of unemployed workers having regular work within a few years after having become unemployed. Interestingly, jobs found after intermediary temporary work are better paid, and the stepping-stone function of temporary jobs

⁵ Some figures based on the European Community Household Panel (ECHP) for the period 1994-2001 can be found in Klammer et al. (2008); Leschke (2008) provides an excellent four-country study (Denmark, Germany, UK and Spain) on non-standard employment based on the same data source. The International Monetary Fund (2010, Chapter 3, p. 10) delivers some estimates on yearly probability of transitioning from a temporary to a permanent contract, ranging from 12.1% (Portugal) to 47.4% (Austria), however omitting estimates for Denmark, Germany, the Netherlands and Sweden).

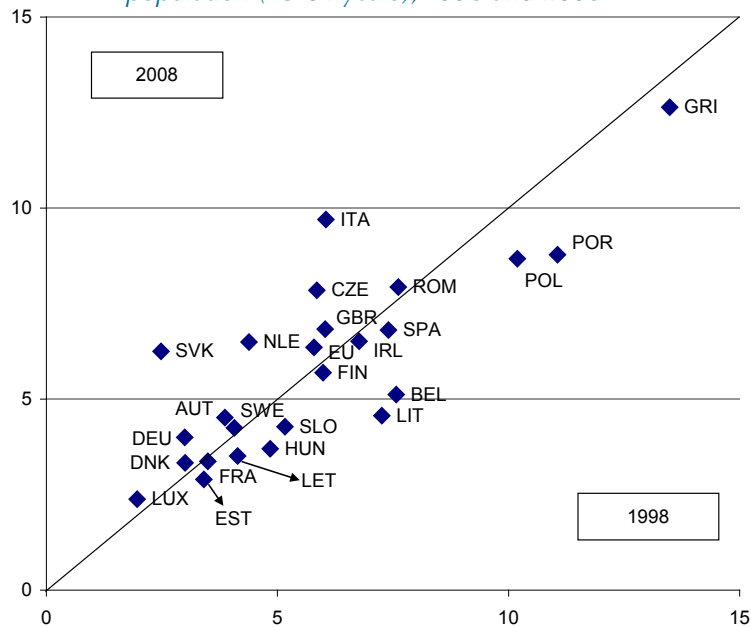
seems to work especially well for male ethnic minorities and lower educated workers, suggesting that policy measures might be correspondingly targeted (de Graaf-Zijl et al. 2009).

So, monitoring and evaluating transitions on a regular basis is still an urgent desideratum, both nationally and in international comparison. Two overall conclusions, however, seem to be uncontested: the higher the share of temporary contracts, the higher the unemployment elasticity (and therefore the unemployment risk) to cyclical variations of demand, a fact that has been well documented by various studies.⁶ For instance, the authors of a case study comparing the unemployment performance of Spain (drastic increase) and France (moderate increase) during the current crisis (Bentolila et al. 2010), argue that labour market institutions in the two economies are rather similar, except for the larger gap between the dismissal costs of workers with permanent and those with temporary contracts in Spain, which leads to huge flows of temporary workers out of and into unemployment. The authors estimate in a counterfactual scenario that more than one half of the increase in the unemployment rate (about 6 percentage points!) would have been avoided had Spain adopted French employment protection institutions before the recession started. The case of the German ‘unemployment miracle’ – to which we shall return – is different. Here, it was less employment protection than the availability of ‘active securities’ that prevented a drastic increase in unemployment. Finally, the increasing concentration of fixed-term contracts among young adults raises serious concerns about how in the future these young people will be able to plan their lives (including family formation and long-term careers).

Third, the percentage of the working-age population that is self-employed (measured here as own account workers without employees and without employment contracts) ranges in Europe from 2 per cent (Luxemburg) to 13 per cent (Greece) (Figure 3).

6 This is reflected in, for instance, the dynamic betas (Okun coefficients), the elasticity measure of unemployment related to output fluctuations, which correlate with temporary work (International Monetary Fund 2010, Chapter 3, p. 14).

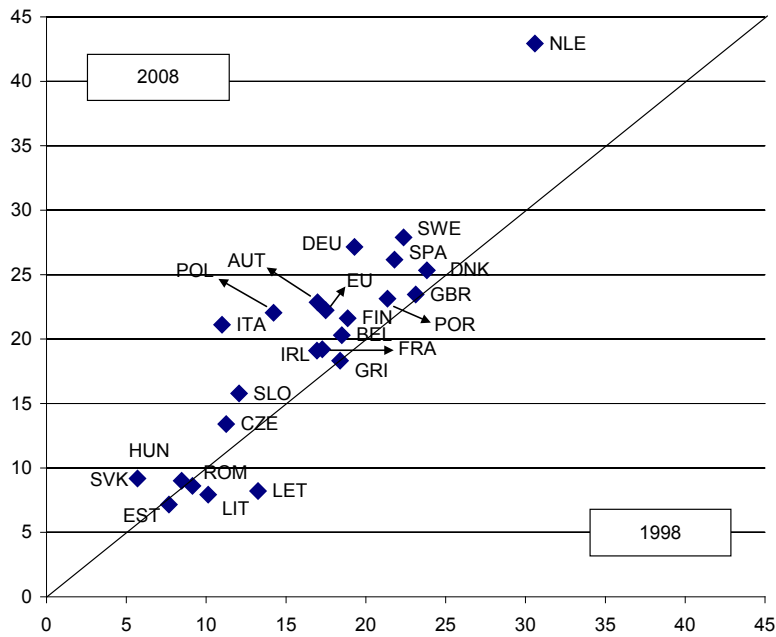
Figure 3: Self-employed (full-time or part-time own account workers) as a percentage of the working-age population (15-64 years), 1998 and 2008



Source: Eurostat, own calculations

There is no clear pattern to the dynamic. In many countries, the rate of self-employment is falling mainly due to the decline in traditional small farming. In some countries, self-employment has increased in the creative sector or due to disguised self-employment, and to some extent also due to the enforced self-employment of unemployed people. Many of these own account workers face a high risk of volatile income and a lack of health or social insurance in old age. Although we know little about transition rates from self-employment to wage work and vice versa, an excellent study from Sweden demonstrates that this dynamic may be substantial (Delmar et al. 2008). Especially the combination of open-ended part-time employment with self-employment seems to be a promising strategy for enhancing employment and income security beyond the standard employment contract.

If we combine these three forms of non-standard employment and control for overlapping (for instance, some part-timers have fixed-term contracts, while some of the self-employed are part-timers), we get the aggregate non-standard employment rate. This rate ranges from 7 per cent in Estonia to 43 per cent in – of course the champion – the Netherlands (Figure 4).

Figure 4: Aggregate non-standard employment rates in Europe, 1998 and 2008

Source: Eurostat, Labour Force Survey; own calculations. The 'aggregate' non-standard employment rate includes part-time, fixed-term and own account work controlling for overlaps; the EU average excludes Bulgaria, Malta and Cyprus.

Further insights are revealed by a deeper systematic comparison of employment relationships in the EU member states, their dynamics and their relationship with other performance measures of employment systems over the last decade (Schmid 2010).

First, through differentiation by gender, the picture becomes more telling. Both the level (EU average in 2008 of about 15 per cent for men and 21 per cent for women) as well as the dynamics (EU average of about 2 percentage points change from 1998 to 2008 for men, and of about 4.5 percentage points change for women) show that non-standard employment mainly affects women. It may come as a surprise, therefore, that this combined indicator of 'flexible employment'⁷ is highest both in the so-called social democratic systems (Sweden, Denmark and – as a hybrid system – the champion: the Netherlands) and in the 'liberal' systems (UK, Ireland). The family-centred continental 'conservative' systems (e.g. Austria, Belgium, France, Germany) as well as the Mediterranean systems (e.g. Italy, Spain) are in the middle, and all the new

7 Non-standard employment is not necessarily flexible in all respects: part-timers, for example, are less flexible than full-timers in terms of numerical working time (overtime, short-time); fixed-term workers are often less flexible than open-ended full-timers in terms of multiple tasks. We will return to this point.

.....

member states (e.g. Czech Republic, Hungary, the three Baltic states) – with the exception of Poland⁸ – are at the bottom.

Second, non-standard employment increased in almost all EU member states, and especially in the Netherlands, Germany and Italy. On the other hand, it is remarkable not only that most of the new EU member states (the ‘transition countries’) cluster together, but also that some of these countries – especially Latvia, Lithuania and Romania – even experienced a decline in the aggregate non-standard employment rate. The most likely explanation for this is that work in the informal economy serves as a functional equivalent of formal non-standard employment. In addition, in countries with low economic prosperity, part-time work (the most important component of ‘non-standard employment’) does not provide enough earnings for women who are engaged in formal labour market work.

Third, the fact that ‘social democratic’ and ‘liberal’ systems rank high in terms of non-standard employment can be taken as circumstantial evidence that non-standard jobs are related to very different regulatory frameworks. Whereas Dutch and Danish non-standard employees seem to be well covered by employment and income security arrangements, the same cannot be said, for instance, for their counterparts in Britain, Germany and Italy. Furthermore, not all of these jobs are precarious or exclusionary. They can serve as stepping stones or as intermediary jobs within a meaningful work–life career. One can also argue that the concentration of non-standard employment among young adults reflects the renaissance of occupational labour markets (Marsden 1999) requiring a series of job-to-job transitions in order to gain professional experiences and competitiveness on the labour market. Nevertheless, even in countries with high security standards, non-standard jobs often involve a higher risk of exclusion than standard jobs.

Fourth, related to the Lisbon Strategy’s goal of social inclusion, the good news is that aggregate non-standard employment correlates positively both with employment and labour force participation and with prosperity in terms of GDP per capita. Although correlations cannot be taken as a causal proof, this observation (especially the positive relationship in the dynamic perspective) nevertheless indicates that increased variety of employment relationships supports a higher inclusion rate of people in the labour market as well as a higher level of market transactions. The bad news is that non-standard employment and the related higher risks are heavily concentrated among women, young people and the low-skilled, that is, among the

8 Although Poland’s employment rate is low, like it is in most of the transition countries, its share of temporary work is very high. Fixed-term employment rocketed from 514,000 in 1998 to 3,207,000 in 2008, whereas total employment stagnated. The probably reason for this is the lax regulation of temporary work, which allowed fixed-term chain contracts without any limit until 2003. It was only in 2004 that Poland introduced stricter regulation, except in the seasonal and temp-agency sectors. In fact, fixed-term contracts reached their acme in 2007, and the number of temporary workers declined slightly in 2008.

more vulnerable part of the labour force. In some countries, and especially in Germany, the extension of non-standard jobs is closely related with the increase in low-wage jobs.

Fifth, and related to the Lisbon Strategy's ambitious claim of world-class competitiveness, empirical evidence seems to indicate that rising non-standard employment does not lead to increased productivity. On the contrary, the relationship between employment growth and labour productivity (GDP per employed worker) from 2000 to 2007 was slightly negative. No EU member state is attaining both high employment and productivity growth (European Commission 2008, pp. 37-9).⁹ As a consequence, the capacity for redistribution (and with it the possibility to compensate the losers in a highly dynamic economy) is weakened rather than strengthened. In other words, in return for higher income security through redistribution (an essential element of the Danish 'flexicurity' model) taking over higher risks related to flexible jobs (in the form of either non-standard employment or high job turnover) becomes a void option if 'flexicurity' undermines not only equity but also efficiency.

Proof that it is non-standard employment that retards productivity growth has yet to be produced. Peter Auer (2007), attacking this issue from one angle, reports a positive yet curvilinear relationship between job tenure and productivity on an aggregate level. Two recent studies at the micro level echo this result. Basing themselves on a firm panel from the Netherlands and sophisticated econometric models, Kleinknecht and colleagues (2006, Zhou et al. 2010) report that firms with high shares of workers on fixed-term contracts have significantly higher sales of *imitative new products* but perform significantly worse on sales of *innovative new products* (first on the market). High functional flexibility in insider–outsider labour markets enhances a firm's new product sales, as do training efforts and highly educated personnel. The study found weak evidence that larger and older firms have higher new product sales than younger and smaller firms. These findings, the authors conclude, should be food for thought for economists who make unqualified pleas for the deregulation of labour markets. A German study (Hirsch and Müller 2010) found that the modest use of temp-agency workers enhances numerical flexibility and thus productivity, while excessive use mirrors low productivity strategies that utilize less social and human capital and primarily aim at circumventing labour market regulations. By applying a large panel data set and fixed effects techniques, the authors reveal

⁹ The exception, perhaps, is Sweden. According to another (six-country) study, Sweden was the only country (apart from the USA) with both an increase in employment and productivity during the last decade. The authors of this study (van Bart et al. 2009) explain this exception basically by productivity gains in services (where Germany, in particular, has productivity deficits), and by high investments in 'immaterial capital' (investments in economic competences, for example in firm-specific human capital; investments in innovation potential, e.g. in research & development; investments in information systems). The huge Swedish investment programme in human resources (The *Knowledge Lift Programme* between 1997 and 2002) may be part of this explanation (Albrecht et al. 2005).

a robust hump-shaped relationship between the extent of temporary agency work use and the user firm's productivity.

Summing up, the evidence shows that the standard employment contract is eroding but not disappearing. The insecurities related to non-standard employment are great, and the related risk of a dual labour market has not yet been solved satisfactorily in most countries, if indeed in any. Furthermore, there are reasonable doubts that the excessive use of temporary workers undermines a sustainable high productivity path.

However, non-standard employment is not per se precarious and insecure. Open-ended part-time work in the range of 20 to 34 hours per week is not necessarily related to insecurities, in either objective or subjective terms. Concerning temporary workers, at least 50 per cent (and as much as 70 per cent in the Netherlands) end up with open-ended contracts after five years, using fixed-term contracts as stepping stones or springboards. So, in some countries – especially the Netherlands and the Scandinavian countries – non-standard employment seems to be well integrated into the overall social security system; in other countries, especially in Germany, more needs to be done. Comparative survey research also shows that subjective job insecurity is not necessarily related to the type of employment contract (e.g., Böckerman 2004).

Furthermore, it would be a mistake to identify non-standard employment with flexible work. Research shows that part-time employees are less likely than permanent employees to switch between different types of work on the job, and there is no difference in the type of 'task flexibility' between temporary workers and permanent workers. Performance-oriented payment systems are less likely in part-time and temporary work. Part-timers and temporary workers are less likely to put in extra hours of work.¹⁰ Finally, there is an alternative – or at least a functional equivalent – to non-standard employment: incorporating negotiated flexibility and security into the standard employment contract.

All this cautions us to be careful in demanding radical changes or betting on interesting but utopian unitary employment contracts such as the French *sécurité sociale professionnelle* (from the left political corner) or the *contrat de travail unique* (from the right political corner), not to speak of the unconditional basic income (*bedingungsloses Grundeinkommen*) as a panacea for all labour market insecurities, which is so prominent in the current German debate. This conclusion seems to be confirmed by a brief look at the theory of employment relationships developed by Herbert Simon (1951), his followers like Oliver Williamson (1985) or David Marsden (1999, 2004), and labour lawyers (Supiot et al. 2001) or law sociologists (see the valuable contributions in Knecht 2008).

¹⁰ For the flexibility potentials and restrictions of non-standard work, especially part-time work, see (among others) Chung (2009) and Visser (2003).

3. On the theory of employment relationships

What does this theory tell? The following brief sketch provides only a rough picture of the state of the art and further research needs.¹¹ The starting point is the interest of stylized labour market actors (employees and employers) in the open-ended and full-time standard employment contract. It goes without saying that a further exploration of this issue would have to differentiate the interests within these two groups of stylized actors.

Employees are mainly interested in *income security* and especially in a steady and possibly increasing income stream over the life course. *Job security* is the most important means for income security, but is also interesting in terms of stable social networks. Furthermore, *option security* (e.g. in terms of available choices of working time and career opportunities) probably plays an increasingly important role, especially for employees with family obligations and high educational potentials. In return for these securities, employees will be willing to accept limitations on their *voice* in matters of work, to be *loyal* to the employer and to not *exit* opportunistically (to adopt the terminology of Albert Hirschman, 1970).

Employers' primary interest in a standard employment contract is *authority* in order to ensure the flexible use of human resources, for which they are ready to provide some job and income security. They are also interested in *reliability* for the sake of the security of high quality services, for which they exchange some voice to workers. This interest will be higher the higher the costs for controlling shirking, which probably correlates with skills and specialization. Finally, they are interested in postponing decisions as a kind of *liquidity preference* in exchange for some job security. Especially this latter 'workforce liquidity' as a tool for managing uncertainty seems to have become even more important than it was in the early 1950s when Herbert Simon thought about it. Workforce liquidity has two dimensions: first, postponing decisions with regard to working times (I shall present an important example of this later) and second, postponing decisions with regard to the tasks or functions the workers are supposed to fulfil. A survey, for instance quoted in Salverda and colleagues (2008, p. 108), found that in 2004 more than 40 per cent of employees indicated that they took over tasks from workers in other job categories within the firm more often than just coincidentally. This is a very substantial level compared to other types of flexibility.

¹¹ More can be found in my book *Full Employment in Europe* (Schmid 2008a, 178-85).

Now, one can ask: what about the disinterest of each party in open-ended and full-time employment contracts, which would potentially (not necessarily) be reflected by an interest in flexible sales contracts in which the terms of exchange are specified?

First, *employees* might lose some interest in open-ended employment contracts if they have income resources other than wages. Although little systematic knowledge is available, anecdotal evidence suggests that substantial capital income or assets are available only to a minority. Some kinds of assets – such as real estate and houses – might even enhance the interest in long-term employment relationships.¹² In return, a well functioning housing market might be a functional requisite for high external flexibility.

Second, interest in experience accumulation in occupational labour markets may reduce interest in open-ended employment contracts. As noted, there is some sign of the revitalization of occupational labour markets, and experience accumulation may be of special interest to young adults. One may plausibly assume that temp-agency firms can play an important role in this respect.

Third, the decline of tenure-related (“fringe”) benefits may be a reason for losing interest in long-term contracts. In return, a policy of transferability of such benefits may increase job mobility; shifting the financing of social security from wage contributions to general taxation, as is largely the case in Denmark, has the same effect.

Fourth, and especially relevant from the TLMs point of view issues of *work–life balance* might enhance disinterest in continuous full-time work for at least three reasons: the interest in combining education with part-time work (especially for young people), the interest in combining family work with gainful labour market work (traditionally women, complemented by more and more men sharing those tasks), and the interest in gradual retirement (elderly) or in utilizing reduced work capacities combined with transfer payments (the disabled). It is self-evident that incentives related to (wage-) income tax and (household-related) transfers will weaken or strengthen these interests.

Employers’ interest in open-ended and full-time contracts may decrease as a result of, first, reduced opportunity costs to buy specialized knowledge induced by information technology; second, the erosion of internal labour markets, complemented by increasing labour mobility through migration or an improvement of traffic infrastructure; and third, information technology decreasing the half-life of firm-specific knowledge and depreciating tacit knowledge. In addition, an increase in overall demand volatility (uncertainty) through the structural shift from manufactured mass production to services (especially around-the-clock social services) will decrease interest in long-term relationships or at least increase interest in a larger flexibil-

¹² The German term *Immobilie* is a particularly telling example of this argument.

ity buffer of human resources. However, how relevant these possibly changing circumstances are remains an empirical question. Potential countervailing factors are diversified and customer-oriented high quality production (Streeck 1991), ensurance of innovative human resource capacities (Freeman and Soete 1994, 122), and increasing recruitment costs for highly specialized workers or increased firing costs due to regulation.

Nevertheless, as far as disinterest in the standard employment contract on the part of either of the contracting parties increases, three alternatives are available: first, turning to sales contracts, in other words buying work or services from outside the firm instead of relying on the own staff; second, enriching the standard employment contract with elements of sales contracts, including negotiated elements of flexibility and security; and third, enriching sales contracts with elements of employment contracts. The only exception, obviously, is the potential interest of employees in open-ended part-time work, which explains (as hinted at by discussing the figures on part-time work) the need to redefine the ‘standard’ at least partly by including high-volume voluntary part-time work.¹³

Let us turn to the first alternative, accepting the factors driving sales contracts, which means buying instead of making. These factors could be the availability of cheaper professional services (e.g. through temp agencies, worldwide subcontractors), the availability of professional freelancers or the reduction of transaction costs for contracting through specialized legal services.

Possibilities to enhance standard employment contracts through elements of sales contracts are performance incentives of various kinds, cafeteria payment systems (e.g. exchanging money for working time accounts, or vice versa) and life-course contracts allowing, for instance, working time to be reduced with seniority.

Possibilities to enhance sales contracts with elements of employment contracts are to support the transition of employees to self-employment with privileged access to subcontracts, which can serve as a quality assurance device for the firm. Other examples are providing training capacities for personal service agencies in exchange for privileged access to high quality temporary workers, building up trust relationships by using joint IT infrastructure, or institutionalizing employers’ networks, for instance, for joint vocational training and education or mutual and intermediate exchange of employees’ services. These and other possibilities have not yet been well researched.

13 In Germany, the Federal Statistical Office (*Statistisches Bundesamt*) has already done this. But even in this case one has to be aware that continuously working in such qualified part-time jobs requires high wages and/or additional household earners and income from other sources, such as capital or inherited assets.

To sum up: the brief sketch of theory on the employment relationship certainly needs more careful exploration, by for example including new insights of behavioural economics related to perceptions of risks and uncertainty.¹⁴ So far, however, plausible reasoning suggests that on the employees' side interest in income, job and option security is still high, but demands for a voice in matters of work or for exit options (at least in form of temporary leaves) are increasing; moreover, various work–life balance issues (especially balancing family and market work) increase the interest in (preferably open-ended) part-time employment. On the employers' side, interest in authority, reliability, loyalty and flexible internal labour capacities is still high, but uncertainty of returns on investment is increasing, volatility of demand is going up, information and communication technologies are making specialized skills around the world more accessible, project and network-oriented types of work are increasing the need for human resource flexibility, and labour supply deficits might enhance the willingness to offer part-time work opportunities.

So, the general conclusion to be drawn from this brief theoretical exercise can be metaphorically formulated by paraphrasing the historical proclamation *'The king is dead, long live the king!': the standard employment contract is dead, long live the new standard employment contract!*

The question now arises: considering both the empirical result of the partial erosion of the standard employment contract and the theoretical result of a still existing interest in long-term employment relationships on the part of both employees and employers, what could or should be 'new' as regards the employment contract? So far, possible answers coming from labour law seem to be limited, as articulated by labour law researchers themselves (e.g. Mitchell 2010), and as evidenced by the debate on labour law from a sociological point of view (e.g. Knegt 2008, Rogowski 2008). Labour law experts unanimously hint at the need to extend the perspective beyond the labour contract by also considering the broad range of regulatory policies that shape labour's position in society: employment policy, training and education, taxes and transfers, unemployment and accident insurance, superannuation and pensions.

The theory of transitional labour markets (TLMs) contributes to this broader and deeper perspective.¹⁵ Its tentative answer is (again metaphorically formulated) to institutionalize 'social bridges' that compensate for the higher risks of increasing contractual variety and to ensure that non-standard jobs either are intermediate stages in the working life or become 'stepping stones' to sustainable job-careers. New active labour market policy must therefore ensure that these institutional bridges also contribute to (or, at least, do

14 See e.g. Akerlof and Shiller (2009), Bernstein (1996), Kahneman and Tversky (2000), Schmid (2006).

15 For literature in the spirit of TLMs, see e.g. Anxo et al. (2007), Auer and Gazier (2006), Gazier (2003), de Gier and van den Berg (2005), Howe (2007), de Koning (2007), Lassnigg et al. (2007), Muffels (2008), O'Reilly et al. (2000), Rogowski (2008), Schmid and Gazier (2002), Schmid (2008), Schömann and O'Connell (2002).

not negatively affect) productivity growth. One strategy to realize this objective might be to exploit more systematically the flexibility potential of open-ended and full-time employment contracts through internal numerical and functional flexibility, especially through working time variability and continuous vocational education and training.

The theory claims that the implementation of the EU's eight common principles of 'flexicurity'¹⁶ requires adherence to consistent normative and analytical principles and consideration of the way people perceive their life-course risks and the way they act in situations of uncertainty. In order to establish such institutional arrangements, the theory of TLMs uses the concept of social risk management, which is elaborated elsewhere (Schmid 2008a, 213-241). The following exemplifies this approach by briefly deliberating on the implications of important restrictions of rational economic behaviour.

16 The eight common principles that were decided, after a green paper-induced consultation of member states, by the European Council in December 2007 are: (1) good work through new forms of flexibility and security; (2) a deliberate combination of the four 'flexicurity' components: flexible and reliable contractual arrangements, comprehensive lifelong learning strategies, effective active labour market policies, and sustainable social protection systems; (3) a tailored approach according to the member states' specific circumstances; (4) overcoming segmentation through stepping stones and through managing transitions both in work and between jobs; (5) internal as well as external 'flexicurity'; (6) gender equality in the broader sense of reconciling work, family and private life; (7) the crucial importance of the social dialogue in implementing 'flexicurity', which means – in the terms of TLMs – negotiated flexibility and security; and (8) fair distribution of costs and benefits (European Commission 2007, Kok et al. 2004).

4. On the governance of balancing flexibility and security

The general question from the perspective of social risk management is how should labour market policy take account of real behavioural traits – such as bounded rationality, asymmetric risk perception and risk aversion – instead of ‘ideal’ traits assumed by pure theory? Two questions are of special importance in the TLMs framework. First, how can risk aversion be overcome in order to induce people to take over more risks and the increased responsibility that goes with them? Second, how can the uncertainty entailed in negotiated agreements or contracts be overcome in order to maintain the mutual trust required for continuous cooperation under conflicting interests? Prospect theory, or the theory of intuitive judgements and choices (Kahneman and Tversky 2000), provides interesting insights into the first question. The theory of learning by monitoring, which goes back to Albert Hirschman’s development theory (Hirschman 1967), and was taken up by Sable (1994) and transposed by Korver and Oeij (2008) to TLMs, supplies useful clues to answering the second question.

The way people perceive risks largely determines their day-to-day decisions and choices. Most people tend to have myopic risk perceptions. They overestimate small-scale risks in the foreseeable future and underestimate large-scale risks in the distant future. Most people are therefore more likely to buy travel insurance than occupational disability insurance. Most people also underestimate the risk of unemployment or the risk of large income losses over the life course due to the erosion or lack of skills. In the last (or perhaps still current) fiscal crisis, we witnessed this asymmetry in risk perception in its extreme form: the human inclination towards recklessness in situations of tough competition or prospective speculative gains, including that of acquiring a reputation as a hero.¹⁷

Another important psychological insight is that losses loom larger than gains in risk perception. On the one hand, most people prefer small certain gains over large uncertain gains; in other words, they prefer a bird in the hand to two in a bush. On the other hand, most people are extremely loss averse. They do not like to give things away even if the prospect of gains is bright. Psychologists have established that the loss to gain ratio is about two to one. It thus makes a difference in perception whether one frames a risk in terms of losses or gains.

¹⁷ This is an old philosophical topic (remember Nietzsche), and often a favourite subject in literature, see for example the novel by Antoine de Saint-Exupéry *Vol de Nuit* (Night Flight), which appeared in 1930, taking up the subject of reckless risk-taking by night flights during that time (air postal services in competition with rail postal services in South America), taking into account the life risk of pilots.

Important conclusions for the policy design of risk sharing can be drawn from these insights. Daniel Bernoulli, one of the founders of probability theory and thus of risk management, provided a clue when he observed that: ‘A beggar will not give up begging for a workfare job since he would lose his ability to beg. He has to be offered something more’ (Bernstein 1996, p. 119-20). This ‘more’ – what could that be?

TLMs theory suggests a specific solution to this social and psychological problem: the extension of the expectation horizon through a set of opportunity structures available in the most critical events during the life course. The theoretical backdrop to this suggestion goes back to Niklas Luhmann. His general political theory (Luhmann 1990) assigns to the political system the function of ‘binding decisions’. The presumption is that such binding decisions result from a process of democratic decision making. The central element of binding decisions is not to impose a specific behaviour on its members. The thrust of binding decisions is to set in motion a cognitive process, in other words learning through commonly agreed objectives, which still have to be specified and operationalized through communication and negotiation, through a constant process of trial and error.

The first pillar of extending such an expectation horizon for interacting players on the labour market would be the establishment of new social rights that go beyond employment. A solution could be the transformation of the employment contract into a citizen-based ‘labour force membership’¹⁸ status (*statut professionnel*) that includes *all* forms of work. This *citizen-worker* status, therefore, would also embrace income and career risks related to transitions between various forms of work, including paid work (employment) and unpaid work (care, participation in collective decision making, etc.). This concept was formulated most forcefully ten years ago in the Supiot Report. The authors of this report start with the observation that the terms of the trade-off on which the classical employee status was based – that is, subordination in return for security – have now been turned on their heads without any new ones taking their place. This creates the problem of adapting labour force membership to the new employer–employee relationship. Where the Fordist model hinged on the stable organization of groups of workers, the new model is based on the opposite idea of the coordination of mobile individuals. It has to react to the necessity (and difficulty) of defining a membership of the labour force that integrates individualization and the mobility of professional careers. To the extent that this individual mobility becomes the dominant characteristic in tomorrow’s world, labour law has to ensure employment stability and thereby guarantee workers recognition as labour force members. The paradigm of employment would thus be replaced by a paradigm of labour force membership for indi-

18 This official English translation is not satisfactory; the original French term *statut professionnel* would be translated into German as *Arbeitsmarktbürger*. Therefore, I sometimes use ‘citizen-worker.’

viduals (or citizen-workers), not defined by pursuit of a specific occupation or a specific job, but covering the various forms of work that anyone might perform during his or her life (Supiot 2001, pp. 25-6, 55).

The new social rights are new in that they cover subjects that are unfamiliar to industrial wage-earners: rights to education and training, to appropriate working hours, to a family life, to occupational redeployment, retraining or vocational rehabilitation, and to fully participate in the civil and social dialogue. Their scope is also new since they would cover not only ‘regular’ wage-earners but also the self-employed and temp-agency, contract and marginal workers. They are new in nature, since they often take the form of social drawing rights, which allow workers to rely on solidarity, within defined and (possibly) collectively bargained limits in order to exercise the new freedoms.

These new securities can no longer be seen as being given in exchange for subordination (as in the old employment contract), but as the foundations of a new freedom to act. They can be considered *active social securities* that go hand-in-hand with workers’ initiatives to shoulder the risks of flexible employment relationships instead of restricting them. Whether the institutional guarantee of security takes the form of open-ended contracts with inbuilt flexibilities or fixed-term contracts with fair risk-sharing devices depends on the situational configuration and on institutional path dependency. We will come back to this point in the final section.

The *second pillar* for extending the expectation horizon would be stepping stones and bridges to overcome critical events during the life course. The tendency to overestimate small-scale risks that are in the foreseeable future and underestimate large-scale risks that are in the distant future, leads people to, for instance, perceive the risk of being stuck in the low-wage sector as greater than the risk of long-term unemployment. This perception may result in being too choosy about the jobs they will accept. Active labour market policies should therefore not be confined solely to offering jobs and placing individuals in work. Opportunities to try out jobs with risk sharing elements or the possibility to fall back on benefit entitlements (like partial unemployment benefits in Finland, or the Swiss *Zwischenverdienst*¹⁹) and follow-up measures are required *to transform sheer workfare measures into stepping stones* to sustainable job-careers.

The *third pillar* for extending the expectation horizon would be psychological bridges to overcome asymmetric risk perception. Accepting risky jobs often means abandoning familiar certainties, even though they may have a lower value than the new employment prospects. These ‘familiar certainties’ can be of various kinds. The reliability of social assistance benefits possibly supplemented by a small amount of clandestine

19 For partial unemployment insurance in Finland, see Kyyrä (2010), and for the Swiss wage insurance (‘Zwischenverdienst’), see Gerfin et al. (2005).

employment is one example, while confidence in one's own *productive capacities* is another. Taking on a risky new job, however, brings with it the fear of losing these capacities.

To give an example: the risk aversion of people from relatively poor backgrounds has both a financial and a psychological dimension. Paradoxically, the psychological dimension can be even more important than the financial one, as signalled by Bernoulli's example of the beggar. We know from motivation studies that poor people are especially dependent on the sociability of their peer groups. Training and education, however, often imply a change of the peer group, especially when job mobility is required at the end. The consequence of this insight might be to arrange group measures instead of individualized measures in order to stabilize trust within an established social network.²⁰

The risk-sharing implies that the programme design must ensure that fall-back positions always remain in sight. It is therefore important for these target groups to have the opportunity to try out several jobs without benefits being immediately withdrawn if one option does not instantly lead to success. Such trials might even be rewarded as an active search strategy (e.g. wage insurance). Trust in such opportunity sets rules out rigid workfare strategies that do not allow for trial and error as a productive job search strategy. For the same reason, the implementation of training measures for these target groups should also avoid raising too high expectations, for example through the requirement of passing formal examinations; monitoring and certifying acquired competences (e.g. via e-profiling) might be more helpful to document goodwill and actual employability.

The *fourth pillar* for extending the expectation horizon would be the establishment and reinforcement of *learning communities*. Learning communities are a paradigm of negotiated flexibility and security, but they differ from traditional collective bargaining in at least two ways. First, they include not only trade unions and employers' associations, but also other parties that play a key role in the regional economy. Second, learning communities usually involve a representative of public authorities at the local, regional or national level.

Learning communities are a relatively recent phenomenon and are known under various names, for instance in Germany under 'Alliances for Jobs' (*Bündnisse für Arbeit*) and in the Netherlands as 'covenants'. In a seminal paper, Ton Korver and Peter Oeij (2008) define – and the following relies heavily on their intriguing rhetoric – a covenant as a signed written agreement, or a system of agreements, between two or more parties, at least one of which is or represents a public authority, meant to effectuate governmental

20 The study by Fouarge et al. (2010) confirms this argument. Asking why low educated workers participate less often in further training than high educated workers, they find that the economic returns to training for low educated workers are positive and not significantly different from those for high educated workers. However, low educated workers are significantly less willing to participate in training. This lesser willingness to participate in training is driven by economic preferences (future orientation, preference for leisure), as well as personality traits (locus of control, exam anxiety and openness to experience).

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policy. Although covenants take many forms, they share common features: enough overlapping interests of participants, mechanisms that bring about both the definition and the machinery of achievements, and the parties cooperate and formal sanctions are absent, yet parties have the opportunity to go to court in the case of another party's default.

Covenants are needed where issues are at stake in which it is not, or not yet clear what exactly is required of which participants to achieve commonly set and shared values and targets. And since this is unknown, it is quite premature to invoke the regular process of bargaining and thus of deciding on the distribution of the eventual net advantages of the joint effort. In fact, what the net advantages are, how they can be achieved and by whom, and how they are then to be distributed, can only be clarified along the way – namely through learning by monitoring.

Learning means acquiring the knowledge to make and do things that markets value (and therewith *un*learning the things that are not so valued). Monitoring means the assessment of the partner-in-learning in order to determine whether the gains from learning are distributed acceptably. This leads to a dilemma. Learning may undermine stable relationships due to changing identities. The result is conservatism, because winners and losers are not known in advance: the advancing knowledge economy, for instance, will very likely increase the inequality of incomes, further strengthening the trend of the past two decades. That may lead to a decision trap: when outcomes are uncertain and the odds are that some will lose and others will win, with the distribution of odds unknown, conservatism is more likely than innovation. In respect to employment and work, conservatism means that parties revert to their already established identities (*I'm a manager*, *I'm a craft worker*, and so on) and to the interests associated with those identities, including social hierarchies and rank, and ideas of equity. When monitoring is steered by already established identities and vested interests, learning is sure to be hampered, if not immobilized, for learning entails a redefinition of identity and interest. New partnership arrangements are therefore needed to overcome such decision traps.

To summarize and to set these observations into the TLMs framework, covenants defined and designed as learning by monitoring are a strategy of policy sequencing. Instead of planning we get exploring (Hirschman 1967), and risks are transformed from danger into trust. The TLM framework does not emphasize risks we want to avoid, that is, those risks we would not normally choose to take. In the context of TLMs one needs to discuss the risks that we take, for instance, when moving from one job to the next, from one employer to the next, from one combination of activities in work, care and education to the next, and so forth. Here, the counterpart of risk is not danger but trust. We do not want to insure only for accidents,

ill-health, undesired mishaps or unavoidable old age; we want to insure for moves we want to make during our career and, indeed, in our chosen life-course trajectories. And as we make such moves in the expectation that they conform to the general goals of more flexibility, more transitions and more training, we want to be able to cash in on our insurance when these expectations are not met. The opportunities for covenants within the TLMS framework are in the transformation of risks: from danger to trust, from external attribution (events we undergo) to internal attribution (events we bring about). For it is this transformation that needs to be made in order to tackle the opportunities of flexibility, transitions and training, and the problems (bottlenecks, linkages) to which these give rise. It is the same transformation that underlies the problem of employability, with its emphasis on personal responsibility, as distinct from the collective or public responsibility derived from the traditional case of involuntary unemployment.

The paradigm of learning communities, however, cannot be applied to all situations of collective choice. We therefore have to come back to the original concept of transforming the classic employment contract into a citizen-based labour market status that broadens the flexibility–security nexus by further elements of ‘active securities’ in the new standard employment contract. In the following, I will elaborate on two regulatory ideas. First, on rights and obligations related to capacity building and second on coordinated flexibility as functional equivalents to external numerical flexibility.

5. Active securities as functional equivalents to numerical flexibility

The first example related to ‘active securities’ can be put under the heading ‘*Capacity building through negotiated ex ante redistribution*’. The general strategy would be to remind policy makers of the forgotten part of insurance, which means to stimulate ‘innovative hazard’ instead of only concentrating on the control of ‘moral hazard’. This is what is meant by the slogan ‘making transitions pay’; in other words, rewarding and ensuring risk taking.

Under the perspective of new social risks related to critical transitions over the life course, it would make sense to extend unemployment insurance to a system of employment insurance. *Mobility insurance*, either in the form of wage insurance (as in Switzerland) or in the form of a severance payment scheme (*Abfertigungsrecht* in Austria) (Schmid 2008a, 293); *restructuring insurance*, either in the form of ‘structural short-time work’ (Germany) or in the form of job security foundations (Sweden) (European Commission 2010, 118-121), and *parental leave insurance* (including the corresponding new EU directive) are already good practice to make transitions pay. In Germany, I have proposed linking parts of former UI contributions to a training fund matched by resources from general taxation for ex ante redistribution in favour of high-risk, low-skill workers. Each worker would be entitled to the same drawing rights from this fund over his or her life course independent of his or her saving capacities (Schmid 2008b).

As the reasoning about transforming danger into trust made clear, such capacity building would have to be complemented through public infrastructures (modern employment services) and the provision of negotiation frameworks (at the firm or social partner level) to ensure fair and efficient implementation. The main reason for the need for a negotiation framework (*‘management by participation’*) with the extension of such citizen-worker rights is evident: as individuals have very different ‘personal’ and time-incongruent needs within a community (here mostly the firm or company), procedural rules are required to compromise between the interest of employers and employees as well as (to an increasing extent) between the interests of employees themselves. Thus, it is for instance not enough to establish for would-be parents the right to parental leave and – as for instance in the new EU parental leave directive – the right to ‘request changes to their working hours and/or patterns for a set period of time. Employers shall consider and respond to such requests, taking into account both employers’ and workers’ need’ (Clause 6.1 of Framework Agreement,

Council Directive 2010/18/EU). National implementation of this framework agreement will have to set clear procedural rules to ensure fair and efficient implementation.²¹

The second example can be put under the heading *'Negotiated capacity building through accommodation'*. The general strategy would be to extend work opportunities by 'making the market fit for workers' with the aim of greater social inclusion. This would mean enriching the standard employment contract by imposing on employers duties of reasonable adjustment in favour of workers, especially those with reduced work capacity.²² In other words – and recently also formulated by Simon Deakin in a joint publication with Alain Supiot – rather than requiring the individual to be 'adaptable' to changing market conditions, the employment contract requires that employment practices be adapted to the circumstances of the individual (Deakin 2009, 28).

Simon Deakin interestingly provides good practices mainly related to disability policy in Europe, an emphasis that correctly reflects the salience of this problem, as also noted by Amartya Sen (2009).²³ A good example in this direction, too, is the recent modification of the German law regarding severely disabled people. The new law stipulates the right of disabled people against their employer to

- a job that enables them to utilize and to develop further their abilities and knowledge,
- privileged access to firm-specific training,
- facilitation of their participation in external training,
- a work environment that conforms to their disability, and
- a workplace that is equipped with the required technical facilities.²⁴

Again, it is evident that these kinds of adjustment duties require support through procedural rules, for instance negotiation through collective agreements, social pacts or covenants between firms and other key actors in the local or regional labour market. At the firm level, the case of workplace accommodation for severely disabled people is possibly a model, since the new rules provide clear procedures to be taken in order to ensure the maintenance of the employment relationship through, for example, the involvement of rehabilitation experts, 'integration management' and 'integration agreements' (§§ 83, 84 SGB IX).

21 Such clear procedural rules are, for instance, not given in the German case, which stipulates the individual right to reduce or increase working time ('time sovereignty') in mutual agreement with the employer. The right to increase working time (relevant above all for part-time working women) according to § 9 TzBfG, is therefore seldom successfully claimed (Kocher 2010, 843).

22 Such duties can be derived (in contrast to all utility-related approaches of justice) from the principle of *justice as agency*, called 'responsibility of effective power' by Sen (2009, 270 ff), or from the concept of 'individual solidarity' in my own terminology (Schmid 2008a, 226 ff).

23 Sen (2009, 258-60) draws attention to the fact that for people with disabilities, the *impairment of income-earning capacity* is often severely aggravated by a *conversion handicap*. He cites a study for the UK showing that poverty drastically jumps by 20 percentage points for families with a disabled member if one takes account of conversion handicaps, whereby a quarter can be attributed to income handicap and three quarters to conversion handicap (the central issue that distinguishes the capability perspective from the perspective of incomes and resources).

24 SGB (*Sozialgesetzbuch*) IX, § 81 (4).

The first example of ‘coordinated flexibility’ can be put under the heading *‘Enhancing internal flexibility through mutual obligations’*. The general strategy is to enhance internal adjustment capacities through continuous and, possibly, anti-cyclical investment. This would mean imposing duties or responsibilities for reasonable adjustment not only on employers but also on employees, especially in terms of investing continuously in their employability over the life course.

In theory, Herbert Simon’s seminal article on the employment relationship already hinted at such provisions (Simon 1951). In the largely neglected fourth footnote he said: *‘A contract to rent durable property is intermediate between the sales contract and the employment contract insofar as the lessor is interested in the effect that the use of the property will have upon its condition when it is returned to him’*. If one replaces ‘durable property’ with ‘employability’, the need for continuous investment in education and training as a requirement for maintaining the ‘durable property’ immediately becomes obvious.

The conceptual terminology of ‘hiring’ (in Dutch, *huur*), to which Robert Knegt drew my attention, reveals the same rationale for such a demand. Whereas the Fordist relations may have required little effort on the part of employers to keep the working capacity of hired workers in due shape (so as to be able to return it at the end of the term of contract), the modern labour market requires more efforts to fulfil this obligation (Knegt 2010); sharing responsibility from the ‘hired’ employees’ side would be the other side of the coin.

I know, this is a sensitive and difficult question. Duties or responsibilities may easily overburden either side of the employment contract or restrict freedom of choice. However, negative externalities for not investing in the future may be one justification, for instance the danger of work accidents, health risks or functional illiteracy resulting from the inability to use new technologies. Positive externalities through individual investment, on the other hand, may not be fairly distributed in the case of bad luck on the market if no (*ex ante*) provision is made for periodic redistribution (Dworkin 2000), for example through progressive taxation, and/or for renegotiation of the contract, for instance through collective agreements. Especially related to such mutual investments as training and education, contracts dealing with the distribution of future surpluses *ex ante* can be more efficient than *ex post* in order to prevent the exploitation of *hold-up situations*, since investments are often not verifiable for one of the parties due to information asymmetries. The delegation of contract renegotiating to a higher level than the firm may also help, since renegotiating

themselves would undermine the trust relationship between employer and employee at the micro level (Teulings and Hartog 1998, 65-76).

The second example of coordinated flexibility can be put under the heading *‘Enhancing internal flexibility through risk sharing or the pooling of human resources’*. The general strategy here is to enhance internal flexibility and security through risk sharing within the internal labour market or by extending the internal labour market beyond the firm through resource pooling.

An example of risk sharing within the internal labour market is the German *Kurzarbeit* (‘short-time work’). This instrument has a long tradition in Germany,²⁵ but can nevertheless be counted as ‘best practice’ case for the TLMs inspired concept of employment insurance. Dismissals or lay-offs are avoided by sharing the income risk of falling demand between employees, employers and the state. When the worldwide financial crisis started, the number of short-time workers rocketed within a few months to reach a peak of about 1.5 million in May 2009, averaging 1.2 million for the whole year, of whom 700,000 were related to the export-oriented metal-electric sector. The crisis hit especially skilled men in economically strong firms and Germany’s hot spot regions (Baden-Wuerttemberg, Bavaria). It is estimated that workers have so far borne about 3 billion euros of the costs, employers about 5 billion,²⁶ and the federal employment agency about 4.6 billion.²⁷ The new regulatory idea connected with this instrument is not to protect individual jobs per se, but to ensure the preservation of accumulated ‘human capital’ and to enhance this capital through further employability measures, especially training and education.

25 Its origin goes back more than 100 years, to a tobacco law in 1909. This law increased taxes on tobacco, inducing price increases that led to lower sales that would have resulted in dismissals in municipalities (especially Baden) that relied almost completely on tobacco production and manufacturing. Since no universal unemployment insurance had been established, the unemployed would have been put on the welfare payroll of these municipalities. So the government was put under pressure by the politically strong tobacco association to compensate for the expected income losses. The compensation was awarded for an adjustment period of up to one year under the condition of maintaining the employment status and work sharing through short-time work. Since then, short-time work compensation has been used on several occasions, especially after World War I. When the first Unemployment Insurance Law was enacted in 1927, the instrument of short-time work got a prominent place and has remained there through all reforms until today. Since 2007, there have been three types of short-time work allowance: the major role is played by *Konjunkturelle Kurzarbeit*, which maintains employment in cyclical troughs; *Saisonale Kurzarbeit* helps construction workers to overcome income risks during bad weather and cold winters; *Strukturelle Kurzarbeit* helps companies in reconstruction to prepare redundant workers to find new jobs. Those earning a reduced income as a result of reduced working time receive compensation amounting to 60% (for those without children) or 67% (for those with children) of the net value; the amount is often topped up to 90% by collective agreements.

26 For the employer, *Kurzarbeit* does not reduce labour costs proportionally with working hours. Some of the fixed costs of labour remain, estimated between 24% and 46% per reduced working hour, depending on the size of state subsidies and on collective agreements topping up short-time allowance, which function as kind of wage insurance through negotiated ‘flexi-
curity’ (Bach and Spitznagel 2009).

27 Financed by unemployment insurance contributions and partly through tax-financed subsidies from the federal government. Apart from extending the possible duration of short-time jobs to two years, the government stimulated the take-up of short-time jobs especially by taking over 50 per cent of social security contributions the employers would otherwise have to pay during the first half year, and 100 per cent thereafter. If training is combined with short-time work, the 100 per cent rule applies already for the first half year, plus coverage of training costs as far as they occur.

Kurzarbeit has prevented – in combination (!) with other work-sharing measures²⁸ plus a demand stimulus for the automobile industry²⁹ – mass unemployment in an astonishing way. Despite a 4.7 per cent decline in economic output, unemployment rose only by 150,000 (0.35 percentage points) in 2009, while employment remained stable or even increased slightly. This remarkable pattern induced the global media industry³⁰ to applaud the ‘*German job miracle*’. This applause is certainly deserved in light of the crisis response of many other countries (e.g. Spain or the USA), but an exaggeration considering the potential negative side effects. The intended combination with training measures, for instance, was not really successful. According to government employment records, in October 2009 only 113,272 workers were combining short-time work with training (cumulated entries). The instrument is also quite dangerous, for it may preserve industrial structures that in the long run will not be competitive. There is also concern that, for the first time in German history, productivity fell during a recession due to additional labour hoarding (Herzog-Stein 2010), but possibly also due to the steady decline of private or public investments in Germany during the last decade.³¹ In any case, the flip side of this kind of employment security will be an extended period of ‘jobless growth’ during the recovery (Möller 2010, 336) or – what in fact is happening in 2010 – employment growth mainly in non-standard forms (temporary and part-time jobs).

A more innovative example of pooling human resources outside risky temporary or fixed-term employment contracts is the recent collective agreement in North Rhine–Westphalia’s metal and electrical industry. This agreement allows firms to lease redundant workers (by keeping the standard employment contract) to firms with labour or skill deficits. The social partners thus adopted a good practice that was already familiar in the soccer industry.³² The story has yet another interesting side issue. If one agrees that this practice should also be possible between industrial sectors (e.g. between main contractors and subcontractors falling

28 Melting down accumulated time accounts (saving the equivalent of 244,000 jobs), overtime work (equivalent to 285,000 jobs) and other forms of working time reductions (equivalent to about 500,000 jobs) through flexible working-time corridors allowed by collective agreements (Herzog-Stein and Seifert 2010, Möller 2010).

29 A 2,500-euro wreck bonus (*Abwrackprämie*) for buying a new car (supposed to be less polluting) in exchange for a car at least nine years old; the German government spent altogether about €5 billion; however, the bonus also benefited imported non-German cars.

30 For instance the magazine *Economist* devoting a special issue (13 March 2010) to the German job miracle, as well as Nobel Prize winner Paul Krugman in his columns in *The New York Times* and *International Herald Tribune*.

31 This alarming trend reflects the probably too heavy reliance of the German employment system on the export industry.

32 Pundits of German *Fußball* were curiously following up a prominent example: *FC Bayern München* lent *Toni Kroos* to *Bayer Leverkusen*. This example is especially telling because it hints at a sensitive issue and at the potential limits of this model. *Bayern München* and *Bayer Leverkusen* are both at the top of the German league (*Bundesliga*). The decisive game between these two clubs took place on 10 April 2010; *Toni Kroos* turned out to be decisive in preparing the one goal for *Leverkusen* to reach a draw, which means he could have scored against his employer, to whom he returned in the 2009/10 season.

under different collective agreements), the German law on temp-agency work (*Arbeitnehmerüberlassungsgesetz*) would have to be changed, since it allows such a personnel change only within the same sector.

A final example of coordinated flexibility relates to the TLMs theory's emphasis on life-course orientation of new active labour market policy, which is 'new' in that it involves to a larger extent than in conventional labour market policy the element of negotiated flexibility and security. A good practice case is the collective agreement of the German social partners in the chemical industry in April 2008. This agreement establishes 'demography funds' (*Demografiefonds*) at the company level, yet with an overall framework agreement at the sectoral level of the chemical industry (including mining and energy companies). Since the beginning of 2008, all employers in this sector are obliged to contribute to a fund €300 per year per employee. The fund can be utilized after corresponding negotiations and deliberations at the firm level for various aims, for example, for early retirement under the condition of building a bridge for young workers entering employment or for buying occupational disability insurance. All firms are now also required to develop and maintain a corresponding and transparent information system reflecting the age and qualification structure of its workforce. This can be expected to lead to the extension of the planning horizon, thereby inducing an explicit employability policy of the firm.

6. Summary and outlook

To sum up, the starting point was that ‘flexicurity’ – the flagship of the European Employment Strategy – still lacks empirical and theoretical rigour. It often invites cheap talk, the mistake that flexibility is only in the interest of employers and security only in the interest of employees, and it tends to be captured by various political interests. The aim of this paper is to contribute to conceptual clarity by using the theory of transitional labour markets (TLMs) in the framework of the debate on the new standard employment contract.

We therefore started with two contrasting and provocative perspectives: some ‘flexicurity’ pundits see the model of the new standard employment contract in the hybrid employment relationship between temp agencies, employers and employees. Even if well-known bad practices, as illustrated by an infamous example from Germany, may easily kill this argument, it has been argued that the potential of this ‘hybrid’ employment contract (a combination of employment and sales contract) should be considered an important element of the new employment contract under the condition that the related new and existing risks are properly taken care of by corresponding new and existing security provisions.

The counter-provocative perspective is: why not go back to the good old days, when the civil servant was the prototype of ‘flexicurity’? In former times, this model clearly provided reliable employment (not job) security and social security in exchange for accepting a wide-range of external flexibility by demanding from the ‘servants’ to move with the jobs, and internal flexibility by demanding to move with the tasks. This model would be hard to sell today, yet it can be argued that the perspective of trading in employment (not job) security for flexibility of various kinds still has some charm. The conclusion was, however, that neither the state as civil service employer nor temp-agency firms as ‘hybrid’ private employers can serve as the paradigm for the new standard employment contract.

The next step was to explicate the empirical backdrop to this conclusion through a systematic comparative overview of the extent and dynamic of non-standard employment in 24 EU member states in 1998 and 2008. The main aim was to explain the sources of new and existing insecurities and the sources of new and existing demands for flexibility on both sides – employers as well as employees. Among the ‘non-standard’ forms of employment, part-time work is the most important driver of increasing labour force participation, especially as it includes more women in the labour market, but to some extent also by enabling young adults to combine work and education and by offering mature-aged workers the path to gradual retirement.

Whereas its flexibility potential is uncontested as far as employees are concerned, *part-time work* – especially in its open-ended and substantive form (more than 20 hours) – does not necessarily increase employers’ flexibility, partly on the contrary. The most important insecurity aspect related to part-time work (especially in its marginal forms) is reduced accumulation of pension entitlement.

Temporary work is basically driven by the wish of employers to manage new and existing uncertainties related to volatile demands and – especially – to reduce wage costs by avoiding, for instance, insurance-related wage increases of open-ended contracts (e.g. seniority wages). High dismissal costs through employment protection regulation are important drivers, too, which explain to some extent systematic national differences in utilizing temporary workers. The most important insecurity aspects related to temporary work are its higher risk of unemployment, low wages and getting stuck in a downward spiral of precarious fixed-term contracts.

Self-employment, as the third most important element of ‘non-standard’ employment, is on the decline related to its traditional components (farming, petty bourgeois business), but thriving – at least in the more prosperous EU member states – in its modern version of freelancing especially in the ‘creative’ sector, often in combination (or sequence) with dependent wage-work. Whereas the latter form of self-employment opens up some interesting opportunities for employers to cheaply outsource tasks and services, it seems to be an interesting playing field for young adults to try individual autonomy and agency, or for parents to combine family work with gainful employment. In any case, however, the related risk of social insecurity (low and volatile income, under-insurance in the case of illness and in old age) is high.

Among many more interesting facets of this exercise, two important conclusions came out. First, there is still a tremendous lack of information about transitions and transition sequences between ‘non-standard’ and ‘standard’ forms of employment, especially in terms of life-course careers, which inhibits firm conclusions on the flexibility and security implications of non-standard employment. What is clear, however, is that these implications are quite differently related to the various forms of non-standard contract. Second, anecdotal evidence seems to hint at the failure of improving overall productivity and competitiveness based on ‘flexible’ employment relationships via ‘non-standard’ forms, especially in relation to fixed-term contracts.

Another weakness in the ‘flexicurity’ discourse is the often implicit assumption that employers want flexibility and employees want security. However, the flexibility–security nexus is much more complex, as discussed elsewhere at length.³³ Another approach to get an analytically more rigorous hold of this nexus

33 See Leschke et al. (2007) and Schmid (2008a, 314-422).

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is the theory of employment relationship, which was first expounded in Herbert Simon's seminal article in 1951 and has since been refined in many ways, especially by the literature of institutional economics and employment systems. Taking up this route in a brief sketch, it turned out that both stylized actors of the labour market still have strong interests in open-ended employment contracts. However, from both sides, interest in new flexibilities and new securities arise for various reasons that have to be taken into account in a renewed 'standard employment contract'. Yet, following the recent debate on labour law, it seems wise not to pin too much hope on a unitary or all-encompassing new contract and to take a more evolutionary perspective in developing new standards.

In exploring such new standards, the theory of TLMS emphasizes the importance of individual behavioural traits in perceiving (new) labour market risks and in making decisions that respond to these risks. Any policy aimed at helping labour market actors to prevent, mitigate or cope with (new) employment risks must consider these traits in designing the right policies or institutions. Thus, the matter of 'flexicurity governance' was taken up in the fourth step by briefly summarizing the insights of new behavioural economics and the theory of learning by monitoring. As most people tend to be myopic when it comes to high risks with low probability and highly responsive to low risks with high probability, and since most people are – depending on the situation and the framing of the problem – either risk averse or unreasonably speculative risk takers, the strategy of extending the expectation (and corresponding planning) horizon seems to be a useful guideline for policy intervention. Four possibilities that are not mutually exclusive but complement each other were presented and discussed. First, the establishment of new social rights beyond employment; second, stepping stones for navigating through various risks over the life course; third, group instead of individual employability measures; and fourth – and especially promising – the establishment of learning communities through social pacts or covenants.

Agreeing covenants (the most interesting element of 'active securities') is rather different from laying down rules and laws. Instead of enforcing institutional forms of 'insurance', covenants build on trust and social cohesion, that is, on forms of 'ensurance'. They are examples of what is nowadays called 'soft law' or 'soft regulation', and they fit in with the larger European trends in coordination. Although it may be too early to advocate covenants for the European level – if only because none of the more essential partners (Council, Commission, European trade unions and employers) possesses the muscle to bring them about – many EU member states have control of these conditions, and the new European Employment Strategy

might at least play a midwife role in supporting such social pacts; European border regions might even start pilot projects related to this.

Another weakness of the current ‘flexicurity’ concept is its neglect of the interrelationship between flexibility and security. In many cases, security provisions are the precondition for ordinary human beings (with ‘animal spirits’) for taking over risks. However, securities can be of different kinds and may have different incentives. As theory tells us, any social insurance contract leads people to think of their contributions as a kind of investment that must have some pecuniary return (even if they are lucky enough not to be affected by the risk over the life course, e.g. unemployment). It is, however, wrong to consider only the negative incentives related to (in fact any kind of) insurance and to concentrate all policies to get this ‘moral hazard’ under control. Much neglected are the positive incentives, which we may call the ‘innovative hazard’ of insurance as it encourages people to take over risks (with positive externalities for society) they otherwise would not take. Such innovative hazard requires a corresponding safety net either in terms of monetary benefits or in terms of social infrastructures on which workers can rely if they are caught by the negative side of the risks they have taken over.

The real art of *balancing flexibility and security*, therefore, is to balance moral hazards as well as innovative hazards in such a way that society indeed reaches a higher level (equilibrium) of flexibility and security. As the empirical part of this paper has shown, the concentration of flexibility measures on external flexibility such as fixed-term contracts and out-contracting (to, for example, own account workers) has shifted risks to individuals or small enterprises without persuasive compensations of security and without producing persuasive evidence of increased sustainable productivity and competitiveness. This gave reason to look for alternatives, and I presented two regulatory ideas based on active securities, which means institutional support enhancing the innovative hazard instead of controlling the moral hazard related to securities: rights and obligations related to negotiated capacity building, and coordinated flexibility as functional equivalents to external numerical flexibility. The final section exemplified the potential role of such active securities, with a special emphasis on good practices from the recent ‘German job miracle’, which, however, had to be partly qualified considering their real or potential dangerous side effects.

A final caveat, therefore, seems to be in order: as successful countries demonstrate, balancing flexibility and security must be embedded in sound macroeconomic and macro social policy. Without a sustainable job creation dynamics, all employability and stepping-stone strategies are in danger of ending up in a cul-de-sac or of displacing other categories of workers. Without new active securities, envisaged and represented

perhaps in a ‘social progression clause’ of a revised Lisbon Treaty, all ‘flexicurity’ strategies might end up in new forms of labour market segmentation.

As the process of Europeanization, in particular through the Eurozone, increases interdependencies, coordinated efforts to stimulate sustainable economic growth are required, especially through investments in a better European economic and social infrastructure. Related to our emphasis on active securities (and in a rather speculative mood), the extension of the European Social Fund to a European Employment Insurance Fund – or at least a complementation of the European Social Fund through a focused European Knowledge Lift Fund³⁴ – would not only make the European Social Model more visible and tangible, but also might make it develop into a new level-playing field for balancing flexibility and security through an enhanced civil and social dialogue.

34 According to the Swedish example (see Albrecht et al. 2005).

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- 01-03 Negotiated flexibility in working time and labour market transitions – The case of the Netherlands
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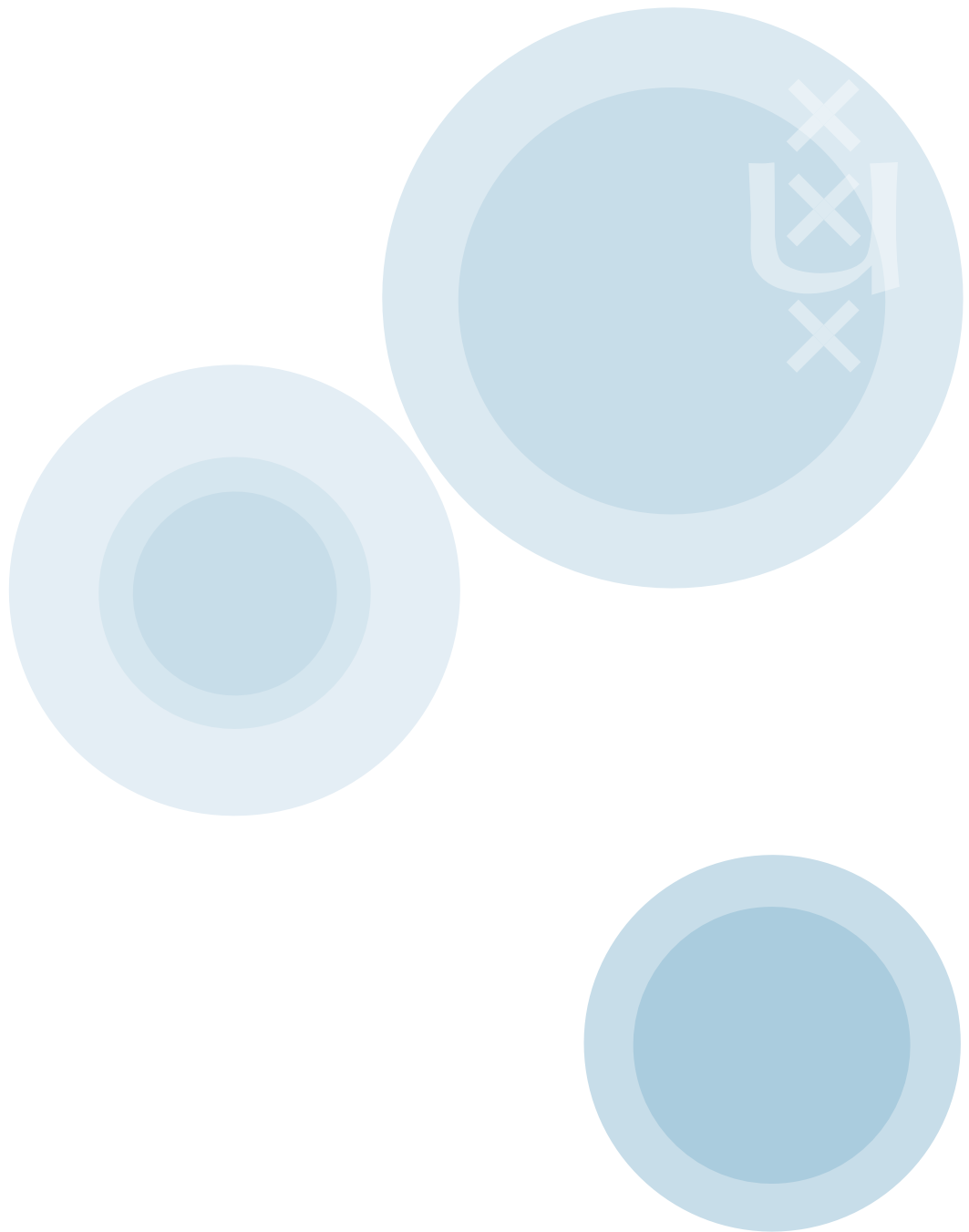
Information about AIAS

AIAS is a young interdisciplinary institute, established in 1998, aiming to become the leading expert centre in the Netherlands for research on industrial relations, organisation of work, wage formation and labour market inequalities. As a network organisation, AIAS brings together high-level expertise at the University of Amsterdam from five disciplines:

- Law
- Economics
- Sociology
- Psychology
- Health and safety studies

AIAS provides both teaching and research. On the teaching side it offers a Masters in Comparative Labour and Organisation Studies and one in Human Resource Management. In addition, it organizes special courses in co-operation with other organisations such as the Netherlands Centre for Social Innovation (NCSI), the Netherlands Institute for Small and Medium-sized Companies (MKB-Nederland), the National Centre for Industrial Relations ‘De Burcht’, the National Institute for Co-determination (GBIO), and the Netherlands Institute of International Relations ‘Clingendael’. AIAS has an extensive research program (2004-2008) on Institutions, Inequalities and Internationalisation, building on the research performed by its member scholars. Current research themes effectively include:

- Wage formation, social policy and industrial relations
- The cycles of policy learning and mimicking in labour market reforms in Europe
- The distribution of responsibility between the state and the market in social security
- The wage-indicator and world-wide comparison of employment conditions
- The projects of the LoWER network



Amsterdam Institute for Advanced labour Studies

University of Amsterdam

Plantage Muidersgracht 12 • 1018 TV Amsterdam • The Netherlands

Tel +31 20 525 4199 • Fax +31 20 525 4301

aias@uva.nl • www.uva-aias.net