UNDECLARED AND PRECARIOUS WORK BETWEEN “FLEXICURITY” AND "SOCIAL POLLUTION". AN HETERODOX APPROACH

Calogero Massimo Cammalleri

associate professor of labour and social security law
University of Palermo

Undeclared and precarious work between "f*lexicurity"* and "*social pollution*".
- *an heterodox approach -*

Calogero Massimo Cammalleri,
associate professor of labour and social security law - University of Palermo

- WORKING DRAFT -

Table of Contents

- ABSTRACT -..1
1. Premise and disclaimer...2
2. From the origin of Flexicurity to the Golden triangle and return..........................4
3. Questions posed by the title..8
3.a What flexicurity?...8
3.b … and what about social pollution?..9
4. Decent work and "incompressible rights"..10
4.b Decent work in the mirror of EU Fundamental Social Rights......................11
5. The environmental protection model...12
5.a The network trade-off..13
6. Reduction of security as pollution: that is a negative externality........................13
7. Internalising social pollution..15
7.a Internalisation through flexinsurance: partial adherence..............................15
7.a.1 Continued: prerequisites for socialised internalisation 16
7.a.2 Continued: The necessity of harmonised internalisation..................................16
7.b Continued: Towards a proposal for indirect taxation on flexicurity..............17
8. From social contributions on earnings to a special indirect tax on the value of the work...18
Annex...23

- ABSTRACT -

The paper critically addresses the origins of flexicurity and argues that it lacks an archetypical definition, especially in the formulation of the EU Commission.
Hence, the paper, basing on a multidisciplinary literature, considers flexicurity as any balance between flexibility and security and, therefore, proposes ordering any set of contracts, providing the same balance and with the same regulatory framework, in "communities". It is assumed, therefore, that communities can differ either in terms of a "protective" trade-off, where the differential is not a surrogate measure of security, or in terms of an economic trade-off, where it is met by the provision of social insurance or security.
One of these sets is called community 0 and it corresponds to undeclared work, not only illegal, but also completely devoid of security and fully flexible.
After identifying from ILO, EU and constitutional sources the foundation of the "incompressibility" of rights which guarantee decent work, the paper likens decent work to a public good of general interest, in the same way as laws generally recognize the natural environment.
On the basis of this comparative axiom, the paper proposes considering the dispersion of security produced by undeclared work as "un-decent" work and, therefore, as a form of

"pollution".
Because an environment can be little or very polluted, the paper proposes considering as social pollution any form, even legal, of security leakage - such as that induced by the precarious and atypical jobs. Any form of employment is, therefore, considered in an *nth* community and every community is ordered from the least secure to the most secure, using as tertium comparationis standard employment, which is itself a point of balance between flexibility and security, and it is therefore a community of flexicurity.
In this way, each community expresses a degree of social participation in environmental pollution: from the maximum produced by undeclared work to the minimum produced by labour standard.
The adopted economic approach allows defining this pollution as a negative externality and, therefore, refer to its contrast in terms of internalization. Among the techniques of internalization, the preferred one is the Pigovian tax, because it can overcome the difficulties associated with the identification of taxable income in the undeclared work and in the informal sector. It has been observed, in fact, that the insurance mechanism creates a regressive effect on the competitiveness of labour standards, making it less competitive in favour of precarious and atypical work and, thus, triggering a vicious cycle that increases *social pollution*.
In this way, it is believed that on one hand you lose your interest in hiding most of the black job. On the other hand, a mechanism would be enforced that forces polluters to contribute to the financing of the security needed to address the pollution created. Because of the adopted ordering of communities, this positive effect would also impact on precarious forms of employment and atypical work in proportion to the security dispersed

*

1. Premise and disclaimer.

This work attempts to provide an answer to the question: how to overcome – without arising labour cost – the security trade-off between standard work and both the absolute lack of protections in the undeclared work and the relatively weakness of protections in the precarious work?

We will try to answer this question in a heterodox manner. It is therefore necessary to provide a methodological premise and make an epistemological clarification.

The premise is that the law is not subservient to the best possible functioning of the market, and that, especially when it is relative to the constitutional standards, i.e. the founding principles of a community, this cannot be changed *ad libitum* if the economic model does not produce the desired results, even if the constitutional standards themselves are preventing them from being achieved[1].

Without foregoing the role of the legal expert and his method, the use, as a term of comparison, of an economic both lexicon and conceptual framework is able to improve a useful dialogue onto an ideal common field.[2]

---

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

[2] Cfr. S. Deakin, F. Wilkinson, *Il diritto del lavoro e la teoria economica: una rivisitazione*, in *Giorn. dir. lav. rel. ind.*, 1999, 587 ss.; R. Del Punta, *L'economia e le ragioni del diritto del lavoro*, *ivi*, 2001,

With this premise, assuming that the performative value of the social model hinges on constitutional standards and not the economic model[3], it is possible to use the perspectives and cultural armoury of economics to carry out our analysis.

In fact, when equity changes, this affects the distributed balance or the implementation or rights established by the law, and the investigation on compliance with the law belongs to the lawyer. At the same time many economists uphold the assumption that *«economics alone cannot determine the best way to balance the goals of efficiency and equity. This issue involves political philosophy as well as economics. As such, economics' role is to shed light on the trade-offs that society faces, just to help us avoid policies that sacrifice efficiency without any benefits in terms of equity»,* rather than suggest policy. Indeed*, «equity, like beauty, is in the eye of the beholder»* [Mankiw[4]].

Moreover, not all policies are consistent with the sources' hierarchical order. Therefore, in relation to flexicurity examining it with an economical-legal approach means translating flexibility as efficiency and security as equity, that's why the legal scholar contribute is fundamental.

Thus, when flexicurity introduces or alters a default balance between flexibility and security (e.g. with respect to standard employment contract), this affects an established distribution of rights by the sources of law.[5] In particular, there can be sources that establish a hierarchy of market needs and work needs, as takes place in the Italian Constitution and EU Treaties, for example, though they are at odds. There can be rights, such as fundamental rights, that are resistant to the needs of flexibility and become real limitations (for example, the principle of equality and non-discrimination)[6]. There are other fundamental rights that can be implemented to varying degrees, but, in any case, do need to be implemented. Finally, there are fundamental rights that, though not directly affected by efficiency policies, depend on other rights that are involved in policies of equity, as it happens in flexicurity[7] policies.

---

3 ss.; U. Romagnoli, *Divagazioni sul rapporto tra economia e diritto del lavoro*, in *Lav. dir.*, 2005, 527 ss; P. Ichino, *Il dialogo tra economia e diritto del lavoro*, in *Riv. it. dir. lav.*, 2001, 165 ss.; R. Pessi, *Economia e diritto del lavoro*, in *Arg. dir. lav.*, 2006, 433; E. Kaufman Bruce, *Il contributo al diritto del lavoro della analisi economica secondo l'approccio neoclassico e istituzionale*, in *Dir. rel. ind.*, 2009, 272 ss; A. Zoppoli, *La soggettività economico-professionale del lavoratore nelle politiche di flexicurity,* in *Dir. lav. merc.*, 2007, 535; P. Loi, *L'analisi economica del diritto e il diritto del lavoro*, in *Giorn. Dir. lav. rel. ind.*, 1999, 547

3 About compatibility of such statement with Title VII of TUE see below in the conclusions.

4 N. G. Mankiw, *Principles of Economics*, 4th Edition, South-Western College Pub, 2006.

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

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

7 Law, like economics, operates in a network – no changes can be made without considering the indir-

All these relationships can be studied: as effects, by means of the economic approach, with these effects reconsidered in light of the low sources; by means of the legal approach, as insurmountable limits to policies reconsidered in light of the economics institution.

In particular, this paper will consider the economic theories of externality and distortion of taxes and analyse the observed effects of them (applied both in the undeclared and precarious work) in light of the limits of constitutions and treaties.

On theme, many studies on employment, income, employment conditions, safety, flexibility, undeclared work and precarious work have been conducted in different fields (i.e. law, economics, sociology, politics), but they are not all correlated with one another.[8] In particular, economics studies do not care aboutlegal limits and law studies refuse to use economics tools to explain some effects of regulations.

All of these studies, very different from one another, can be re-thinking to find an implicit functional link between them, that would improve work conditions and market efficiency- such as flexicurity aims at.

2. From the origin of Flexicurity to the Golden triangle and return.

Flexibility and security are terms that have been used to develop the debate on "new" labour law and the "new" social model for several years; they are the (necessary but insufficient) constituents of flexicurity[9].

ect effects on the whole system. As such the mirror of the economist reflects the image of the legal expert. For example, a change to one aspect of internal security such as working hours could lead to a loss in social security – in childcare, for instance – even when it does not produce any changes to pay. Just as economic studies "help us avoid policies that sacrifice efficiency without any benefits in terms of equity" (Mankiw 2006), legal studies can help us to avoid policies that reduce (or at worse erase) equity as an unforeseen network effect, even when policies appear virtually neutral or with limited equity losses. If the network effects have not been assessed, the balance between efficiency and equity cannot function as expected and will be unpredictable. (Plato would tell Kleinias not to confuse commensurable greatness and incommensurable greatness).

[8] This study will gather together suggestions, in particular those of the legal studies by L. Zoppoli, *La flexicurity dell'Unione europea: appunti per la riforma del mercato del lavoro in Italia*, in WP C.S.D.L.E. "Masimo DAntona, n. 141/2012,; Id., *Flexicurity e licenziamenti: la strict Employment Protection Legislation*, in Dir. lav. merc., 2007, 597; A. Bellavista, *Armonizzazione e concorrenza tra ordinamenti nel diritto del lavoro*, in AA. VV., *La competizione tra ordinamenti giuridici*, Milano, Giuffrè, 2007, p. 73 ss; Id., *Al di là del lavoro sommerso*, in Riv. Giur. Lav., 2008, 9 ss.; A. Bellavista, A. Garilli, *Politiche pubbliche e lavoro sommerso: realtà e prospettive*, in Riv. giur. Lav., 2012, 269 ss. Bell (2009); those of the economic studies by F. Oropallo, G. Proto, *L'impatto di alcune misure di riduzione del cuneo fiscale sulle imprese e sulle famiglie*, in "*Metodi e Strumenti a supporto delle Politiche*", Istat, Giugno 2006. in relation to the impact of the reduction of labour costs on companies and families; and, from a sociological perspective, those by Karpinnen and Bushak (2008, ed.), and Vermeylenn and Hurley,1 regarding flexicurity in the EU; last but not least, the critical studies on flexinsurance by A. S. Tangian, '*Monitoring flexicurity policies in Europe from three different viewpoints*', WSI Discussion, paper n. 145, Düsseldorf, Hans Böckler Foundation, June 2006. Obviously, much of the vocabulary is taken from T. Wilthagen, F. Tros, *The concept of "flexicurity": A new approach to regulating employment and labour markets*, Transfer, Vol. 10, No. 2, 2004, pp. 166–186; E idem, *Towards 'flexicurity'?: Balancing flexibility and security in EU Member States*, Paper for the 13th World Congress of the International Industrial Relations Association (IIRA), Berlin, September 2003.

[9] European Commission, "*Modernisation of Labour Law to meet the challenges of the 21st century*", COM/708, 2006; European Commission, *"Towards common Principles of Flexicurity. More and better jobs through flexibility and security"*, 2007, *DG for employment and social affairs and equal op-*

According to what is collectively reported in the literature [ex multis Maarten Keune and Maria Jepsen,[10] Michael Parnis,[11] Wilthagen, Tangian[12], Jørgensen[13], the neologism flexicurity traces back to Dutch sociologist Hans Adriaansens who coined the term in the mid 1990s, during an interview on the subject of preparatory works on the Dutch Flexibility and Security law of 1998/99.

Adriaansens defined it *«as a shift from job security towards employment security»*. Keune and Jepsen claim that Adriaansens' neologism was quickly adopted by some Dutch (Wilthagen[14], Muffels and oth,[15] German (Keller and Seifert 2000[16]; Klammer e Tillmann 2001[17]), Danish (Madsen 2002, 2003)[18] and Belgian scholars (Sels e van Hootegem 2001, Sels and oth.[19]), and was adopted by EU economists and sociologists in 2006; however, legal experts did not pay it any significant attention until the EU Commission Green Paper on the modernisation of labour law was published.[20]

portunities, 2007; K. Phillips, R. Eamets, J. Allja, K. Krillo, L. Lauringson , *Approaches to Flexicurity: Eu Models*, *Office for the Official Publications of the European Communities*, 2007; C. Massimiani, *Flexicurity in times of crisis. (La flessicurezza nell'epoca della crisi, Dossier C.S.D.L.E. Massimo D'Antona*, n. 13/2009 [***(ces31xx.doc)***].

10 M. Keune, M. Jepsen, *Not balanced and hardly new: the European Commission's quest for flexicurity*, *European Trade Union Institute for Research, Education and Health and Safety (ETUI-REHS)*, in *Flexicurity and Beyond*, Henning Jørgensen & Per Kongshøj Madsen (eds.), Copenhagen, DJØF Publishing, 2007. [***(00281.pdf)***]

11 M. Parnis, *Flexicurity in the European Union*, paper for the 5th Meeting, Prague, 5 May 2009.

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

13 H. Jorgensen, *Danish flexicurity in crisis or just stress-tested by the crisis?*, Friedrich Ebert Stiftung, paper, 2011.

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

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

16 B. Keller, H. Seifert, *Flexicurity – das Konzept fur mehr soziale Sicherheit flexibler Beschaftigung*, *WSI Mitteilungen*, 2000, 53 (5), 291-300.

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

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

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

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

After Adriaansens's statement, the term first appeared as a scientific tenet in a paper by Ton Wiltghen in 1998 [Flexicurity – *A new paradigm for labour market policy reform?* Berlin: WZB Discussion paper, FSI 98- 202]. While on a normative level the two explicit constituents of flexibility and security appear in the Dutch Flexibility and Security act of July 1998 which came into force on 1st January of the next year, and in which no explicit mention was made of flexicurity, but flexibility and security measures introduced inspired by employment security rather than security in relationships were introduced.

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

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

This asset reflects the orientation of the Dutch (Labour-Liberal) coalition government of the 90s that, to reconcile the interests of businessmen and workers, at once reinforced companies competitiveness through flexibility and protection of workers through security. This law implicitly marked the creation of the Dutch flexicurity model, even if not explicitly. It was characterised by the use of atypical contracts and flexible types of work, providing them with labour laws and social security for them analogous to those for standard work (Amoroso[21]).

This model has undoubtedly inspired community directives [2008/104] on temporary work and [1997/81], on part time work and[1999/70], on work through agencies, in which the security component seems to have been left as a mere equal treatment clause [Bell[22]] without any added value in relation to standard contracts, and is – in Italy at least – a flexible variant of the latter that provide less protection.

In truth, differentiating between the overall protection given by typical and atypical jobs goes against the spirit of flexicurity. In fact, *«flexicurity thesis argues that, due to a more dynamic labour market ..., flexibility and security are inextricably linked. They form a kind of 'double bind', a mutual relationship or a synergy: a high level of mobility or flexibility enables a country to compete successfully and also to afford a high level of in-come and employment security. At the same time, the latter should be an underlying prerequisite for sustaining high levels of flexibility»* (Wilthagen and Tros, 2004)

The premise of this betrayal can be discovered by comparing the doctrinal definition of flexicurity and the institutional definition of the Commission. According to the famous definition by Wiltaghen and Tros (based on Wiltaghen, Rogowski),[23] la flexicurity is

«A policy strategy ***that attempts, synchronically*** *and in a deliberate way, to enhance the flexibility of labour markets, the work organisation and labour relations on the one hand, and to enhance security – employment security and social security – notably for weaker groups in and outside the labour market on the other hand.»*.

---

[21] B. Amoroso, *Luci ed ombre del modello sociale danese*, in *Dir. lav. merc.*, 2010, p. 227 ss

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

[23] T. Wilthagen, R. Rogowski *Legal Regulation of Transitional Labour Markets*, in G. Schmid, B. Gazier (eds.) *The Dynamics of Full Employment:Social Integration through Transitional Labour Markets*, Cheltenham, Edward Elgar, 2002, 250.

In the same paper the authors emphasise that flexicurity not only indicates a policy but also "a certain state or condition" of the labour market. As such the term must not only define a typical form of security and a typical form of flexibility,[24] it presupposes "a high level of mobility or flexibility enables a country to compete successfully and also to afford a high level of income and employment security" as a prerequisite of flexibility.

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

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

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

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

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

The Commission thus favours a morphological approach to the fusion of flexibility and security;[25] whereas the scientific definition takes a more holistic approach derived from an attempt to fuse the semantic fields of flexibility and security.

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

Balance is the element that allows (or would allow) us to get closer to flexicurity in from a holistic perspective. By using this approach it is possible to identify balance as a function of the extent to which the sum of the two terms does not result in a trade-off in favour of one or the other. Indeed, flexicurity aims to prevent ant trade-off and the intrinsic contradictory neutralisation between its constituents.

The Danish social model, with its golden triangle, is generally considered to embody a model

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

[25] The directives on atypical work are a clear example of this, as shown by Bell 2012.

of flexicurity that can achieve semantic fusion and overcome the morphological oxymoron.[26]

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

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

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

In the absence of a well-defined archetype, and with a watered-down institutional definition in comparison with the scientific equivalent, even the subsequent doctrinal processing [Muffel and others[28]] (and the Commission (Com(2007) 359 def.)), reaffirms the notion that flexicurity has no single form, for example the constantly evoked Danish and Dutch models, but must be combined with conditions in individual countries. So, it allowed to shape any therefore our own flexicurity model.

3. Questions posed by the title.

What flexicurity and what we mean by social pollution.

3.a What flexicurity?

As already discussed in the introduction, beyond its institutional definition. flexicurity is presented as a holistic philosophy, the constituents of which, flexibility and security, are

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

[27] J. Jespersen, (edited by), *Flexicurity. The shangri-la of EU or merely another mirage? , EU-studies – Spring 2006 – Roskilde universitetscenter .*

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

combined to generate a new subject/object that is greater than and different from their sum. As in biology, the sum of the same elements generates different subjects, not only from the elements in question, but between them as well, so in flexicurity the sum of flexibility and security should not generate a universal flexicurity, but a (balance of) flexicurity adapted to a different cultural, social, economic or, not least, legal environment in which flexibility and security are combined.

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

This definition can also be used when the variation of the point of equilibrium takes place in the opposite direction, i.e. towards a decrease in flexibility compensated by a decrease in security. In this case we could also call it inflexicurity[29]- of course, if we assume that the purpose of flexicurity is not just any balance between flexibility and security, but rather only a balance that increases flexibility. However, in both cases this is obviously a relative concept, that is relative to the standard contract used as a reference. This is the issue we will focus on.

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

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

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

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

In this perspective, every increase in flexibility or every decrease in security (which is the concerning both undeclared and precarious work, even if each one has a different measure) must find – synchronically - compensation. This compensation, which is typical of flexicurity, implies two issues: the first one is that the security differential is a trade-off; the second one is that the neutralisation of the trade-off implies a cost.

Hence, here the bet is finding a system to finance those security costs without increasing both tax and labour cost.

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

3.b … and what about *social pollution*?

To define the phrase "social pollution" we should consider the pattern of undeclared work,

[29] This aspect must obviously be kept clearly distinct from the other in that no lack of security occurs, though the flexible content is very low (see text below).

which takes places within an illegal system, with no security at all. This distinguishes it from informal work which, though not illegal, is equally lacking in any social or normative protection. In undeclared work, flexibility reaches the highest levels, albeit it takes place illegally in this case.

When undeclared work reaches a sizeable ratio compared to the declared one, and becomes a system with its own rules outside the legal system, that has even been integrated into the legal production system to some extent, it becomes a parallel system which an author (Zoppoli 2007) names it *the second community*- to emphasize its opposition to the legal system that he calls *the first community*.

From this author we take the idea of the community to define a significantly extended and not necessarily illegal group in which the same rules are applied. As such the undeclared work community will be called community 0 (zero). Therefore, we name the total loss of protection in community 0 as social pollution. In the following paragraphs we will investigate the legal basis of equation *undeclared work = social pollution,* as a prerequisite of the investigation at the macro level.

For this purpose is necessary to identify the regulatory framework of the "incompressibility" of certain rights. The Italian legal system will be used for this, as it is known to the writer. However, because of its extensive relations with international and EU organisations, the conceptual frameworks used, the literature and proposed solutions, could be adequately exported to other legal systems if appropriately adapted. After all, there are those who claim that «similarities are always more than differences in European Social Model(s)»[30]

4. Decent work and "incompressible rights".

The investigation in question builds on the concept of *decent work* and – correspondingly – of the *undecent work* .

The Decent Work Report presented in 1999 at the International Labour Conference by Director General of the ILO Juan Somavia states: «*the primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity*». Thus the concept of decent work was formed, comprising of freedom, equity, security and human dignity in work. During the 97th Session of 10 June 2008 decent work was incorporated into the ILO's Declaration on Social Justice for a Fair Globalization. Four strategic objectives were identified in the context of the *Decent Work Agenda*: «*to promote and implement the standards and fundamental principles and rights at work* (1)*; to enhance the opportunities for men and women to obtain decent employment and wages* (2)*; to expand the scope and heighten the effectiveness of social protection for all* (3)*; to strengthen tripartism and social dialogue* (4)». We will refer to the second and third of these objectives in our comparison with undeclared work.[31]

The phrase decent work therefore focuses the fundamental issues of the ILO's action in a "single conceptual container" by highlighting that the above objectives are interrelated and interdependent. This creates a reference framework for all the orders (and all policies a fortiori): freedom, equality, security and human dignity define the boundaries of a social environment that the actors within it may not cross.[32]

---

[30] I. Maselli, *Beyond Flexibility and Security: A composite indicator of flexicurity*, in *Economic Policy, Centre for European Policy Studies (CEPS) Working Documents*, 27 May 2010.

[31] Available at http://www.ilo.org/public/english/support/lib/century/index6.htm

[32] "The ILO is concerned with decent work. The goal is not just the creation of jobs, but the creation of jobs of acceptable quality. The quantity of employment cannot be divorced from its quality. All societies have a notion of decent work, but the quality of employment can mean many things. It could re-

4.b Decent work in the mirror of EU Fundamental Social Rights.

For our purposes we will consider arts. 31 and 43 of the Charter of Fundamental Rights in particular, and, unless otherwise indicated, it can be assumed that this refers to the protection of security.[33]

According to art. 31.1 "every worker has the right to working conditions which respect his or her health, safety and dignity." Consequently, a degree of security must be provided regardless of the type of contract adopted. According to art. 31.2 "every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave." As a result, a degree of security must be provided through imperative legal regulations. According to art. 34.1 "the Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices." We may also consider art. 34.3, according to which the EU "recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources."

It is hard to overlook the strong consonance between the principle of decent work (which is certainly intended for production conditions that far removed from the EU standards) and the terms of the Charter of Fundamental Rights. There is no risk in stating that the Charter of Fundamental Rights analytically interprets that which is defined as decent work by the EU, which is intended to therefore take on a meaning that is consistent with the recognised binding nature of the EU fundamental social rights, with a minimum security value that must be guaranteed to workers by each regulation. To phrase it differently, the Charter's fundamental social rights represent a basic level of fundamental treatment that cannot be lowered.[34]

It follows that each regulation by the Member States interprets and implements the above principles in a consistent manner that is compatible with its own legal, economic and social traditions; there can therefore be different levels of protection of the fundamental social right both between the Member States and within a individual regulation by a Member State depending, for example, on the different types of relationships. Anyway they are not an obstacle to identify a common rules' framework.

The issue we wish to consider, indeed, does not concern individual provisions or their degree of implementation in various regulations. It, rather, concerns the common *humus* formed by belonging to both the ILO and the EU, so that it can consider decent work as a whole, not as a subject that just affects actors on the labour market (social partners, companies, workers) - as a mandatory shared system that protects the interests (not only of the actors on the labour market

late to different forms of work, and also to different conditions of work, as well as feelings of value and satisfaction. The need today is to devise social and economic systems which ensure basic security and employment while remaining capable of adaptation to rapidly changing circumstances in a highly competitive global market." Available at http://www.ilo.org/public/english/support/lib/century/index6.htm

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

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

but) of all European society.

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

5. The environmental protection model.

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

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

Any legal system can be used to transpose this natural environmental pollution analysis grid to the social environment, because in any legal system you will always find both various degrees of social protection and various levels of implementation of fundamental social rights. As a consequence, with one exception of a hypothesis that will be taken into consideration later, it can be said that EU decent work is carried out in any labour regulation systems. Since this is carried out with different gradations of protection, you can order it, inside each considered legal system, for *nth* degree communities (which we previously defined as regulatory groups that are significantly far-reaching and that apply their own rules) from the least to the most secure. We will place community 0 at the bottom end of these communities, as it is positioned outside the legal system and therefore lacking any degree both of protection and security (and which is flexible to the highest degree). This is the community of undeclared work. As it is an illegal community it is of course placed directly opposite the concept of fully decent work.

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

It cannot be doubted that undeclared work must be fought and repressed; undeclared work is in general, and eminently public interest and not solely the particular/individual interest of the workers that are exploited by it.

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

All the communities, as you move away from community 0, are flexicurity communities (or inflexicurity according to the definition used) to various degrees, and will be called nth degree communities. For example, work that is informal but not significantly present in Europe,[35] legal but completely lacking in protection would represent community 1; this would (typically be a case of inflexicurity) and, for example, the self-employed community would represent the community 2 and so on.

[35] In Italy these are regulated as additional work recognised with a minimum of welfare rights through a voucher mechanism. Despite its laudable intent to fight misuse and combat undeclared work, it is very cumbersome and ends up being ineffective.

The ordering of the reference communities from 0 to infinity represents the different points of balance between flexibility and security, with a possible trade-off both within the community and, at the system level, the transitions between communities.

5.a The network trade-off.

In relation to this latter aspect, it can be also observed that the choice of a point of equilibrium among different communities is neither neutral nor technical choice. In other words, changing worker protection from security in relationships to market security does not produce neither a zero-sum game nor, as Jorgessen proposes, greater than zero result. Even if, for a particular group of workers, the sum could be considered either equal to zero or greater than zero, the variations would have different implications for the whole system and for other categories of workers- that is, at the macro level, which is what we consider here.[36]

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

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

In addition, various degrees of flexicurity - including those between different countries - can create a distortion of competition when greater competitiveness is pursued through social dumping, which is what happens to the highest degree in the case of undeclared work.

6. Reduction of security as pollution: that is a negative externality

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

The overlapping of the natural environment to the social environment make both recognizable as a "public good-common good" and allows us to consider varying degrees of pollution of the common environment (whether it be environmental or social) that are tolerable for the sake of satisfying indispensable functions, under certain conditions, whereas that of the 0 community is intolerable.

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

As such, with all the caveats of the case, the differences between the dispersion of security

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

produced by undeclared work and that produced by precarious works can be considered quantitatively.

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

In the lexicon of the economists this "necessary pollution" is called negative externality.[37] Economic theory states that externality, though inevitable, should be internalised[38] to some extent, i.e. at least part of the benefits that the individual enjoys by polluting the common good should be given back to the community.

The remedies proposed by the economists to internalise negative externalities are of a diverse nature, and include bans, subsides, tradable entry rights[39] and Pigovian taxes.[40]

According to Europe 2020 strategy, at EU level, the Commission will work: *«to enhance a framework for the use of market-based instruments (e.g. emissions trading, revision of energy taxation, state-aid framework, encouraging wider use of green public procurement)».* Of course, this concerns green energy *strictu sensu*, albeit it can be said that its scope can be exportable in other fields involving public.

---

[37] *«An externality is the impact of one person's actions on the well-being of a bystander. If the effect on the bystander is adverse, it is called a negative externality; if it is benefical, it is called a positive externality. In the presence of externalities, society's interest in a market outcome extends beyond the well-being of buyers and sellers in the market; it also includes the well-being of bystanders who are affected. - Because of externality, the cost to society of producing aluminum is larger than the cost to the aluminum producers. For each unit of aluminum produced, the social cost includes the private costs of the aluminum producers plus the costs to those bystanders adversely affected by the pollution», in such way Mankiw 2006. On theme cfr.* F. Pellizzari, *Esternalità ed efficienza:un'analisi multisettoriale*, in *Economia politica - Journal of analitical and institutional economics*, 2004, 99; F. Sarracino, *Esternalità negative, beni posizionali e crescita economica*, *Il Ponte*, 2009, 128; G. Chirichiello, *Esternalità ed il teorema di Coase: un teorema, nessun teorema, o molti teoremi? Una introduzione critica*, in *Riv. dir. comm. e di dir. gen. obbl.*, 2004, 673; F. Odella, *Conseguenze inattese e genesi dei processi economici: il ruolo delle esternalità nell'approccio sociologico*, in *Sociologia del lavoro*, 2003, 99 ss.

[38] «*Such a tax is said to be internalizing the externality because it gives buyers and sellers in the market an incentive to take account of the external effects of their actions*». Mankiw (2006)

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

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

The proposal we intend to advance is heading in this direction. Considering the existing security differential between one community and another, and taking into account that as we gradually move towards a flexible community we lose security in favour of flexibility, in the given paradigm the protection, i.e. security, differential constitutes a degree of social pollution.

Al the same way the social provisions that reduce the precariousness negative effects or – saying it in other words – that inject security in the market, are “anti-pollution devices.”

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

7. Internalising social pollution

7.a *Internalisation through flexinsurance: partial adherence.*

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

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

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

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

This approach is definitely interesting and analogous to what is being proposed from a structural perspective, i.e. internalisation of the social pollution dispersion by those who produce it. However, the choice of the insurance mechanism proposed is not convincing. In fact, as will shortly be explained, it is a perhaps fair but surely ineffective remedy, in that the insurance mechanism would do nothing more than neutralise the internal difference in competitiveness between precarious and stable employment, but would had none effect with reference to both undeclared and de-localised work. Or, by outsourcing, as occurs in the supply chain of the textile industry, where outsourcing is towards procurements in the black economy. Instead flexinsurance is not able to fight those, since it makes work more expensive precarious but doesn't make not the standard one cheaper.

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

dumping. The same is, of course, for any social insurance model.

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

7.a.1 Continued: prerequisites for socialised internalisation

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

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

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

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

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

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

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

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

7.a.2 Continued: The necessity of harmonised internalisation.

Again, the same social pollution structure, i.e. with a dispersion of security, is reproduced within each state when delocalisation is considered. In fact, delocalising production to countries

with a lesser social protection (and therefore smaller cost of work) is equivalent to dispersing a social security financing source from a dual perspective.[41]

On the one hand, the quota of delocalised production, which is already destined for the domestic market of individual countries, no longer finances any social protection measures for domestic workers-consumers, and on the other hand, its quota no longer contributes to financing social insurance because of the cost of labour required to produce it. We can observe here that flexinsurance, which is based on a Bismarckian payment system with compulsory social contributions, is also completely ineffective in this instance. As said, it affects the cost of labour, but as that cost is either delocalised or shifted to the black market (in the case of undeclared work) it is unable to affect it.[42]

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

7.b Continued: Towards a proposal for indirect taxation on flexicurity.

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

As has been observed by Davies (2006) «*it's not bought levels of welfare. States can still regulate and use taxation to ensure universal coverage. It's about institutions and borders. Provision is being fragmented and de-nationalised. It remains to see how far this will go, but the trend is for Member States to encourage the process by themselves stimulating more diversity and freedom of provision, and so creating a proto-market which EU law than takes further».*[43]

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

---

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

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

[43] G. Davies, The Process and Side-effects Harmonisation of European Welfare States, New York University School of Law, Jean Monnet Working Paper, n. 02/2006.

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

It is thus possible to infer that it is necessary to harmonise the method of financing the social security system functional to the implementation of worker protection, mobility and the circulation of business, which are in turn required and prerequisite for the common market to avoid distortions. This anti-distortion perspective allows us to dribble, to borrow a footballing metaphor, through the hermeneutic tight spot posed by chapter VII on the fundamental value of the Charter. Moreover, chapter VII is also intended to protect against the distortion of competition and therefore it should be considered - *a fortiori* – that, when a distortion of competition comes from social dumping, the social protections must win over the limits of the letter of title VII.

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

The model helps either to neutralise the contract type as a means of financing the social security system that is unaffected by tax and contribution pressures, or to selectively modify it both to struggle precariousness and – overall – to lighten tax on labour.

Indeed, to reduce the cost of work, some EU policies[44], and especially Europe 2020 strategy [COM(2010) 2020] suggest reducing the impact of contributions on wages and therefore shift the tax burden from direct to indirect taxes.

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

This is a market-based instrument that, like Europe 2020 suggests, can help to «*define and implement the second phase of the flexicurity agenda, together with European social partners, to identify ways to better manage economic transitions and to fight unemployment and raise activity rates*».

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

8. From social contributions on earnings to a special indirect tax on the value of the work.

First, let’s consider the system’s security needs, as all studies on flexicurity do (e.g. Wermeylen-Hurley 2007), as a general need of a society.

---

[44] Zoppoli 2007, Bellavista 2006, in ordine a COM (2008), e in ordine a (COM (98) 219 finale e sempre BER-CAR-RIC 2000; e in ordine all'IRAP Coppola 2007.

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

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

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

From this observation it can be inferred that if the taxation system for financing social security is transferred to the price of the product or service, whoever produces the product or service at a competitive price or whoever purchases it at a competitively contributes to it.

As long as the social tax is directly levied on work, the only way to avoid this tax is to make use of black market work, which we called (illegal) community 0, where the competitive value is variously achieved through under-pricing and lower costs.

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

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

There is a part of the price of the product or service that is intrinsically intended for security, but it is subtracted from the financing of this because of a technical tax problem that fails to target the dispersion of security, causing negative externalities and distortion of competition.

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

We think that there is a greater need to redistribute the social contribution between companies in terms of balancing the trade-off between flexibility and security on the one hand, and to remove the social externalities of the trade-off on the other.

To increase security and maintain a balance of flexicurity, an analysis will be made of the results of a study by Oropallo-Proto[45] on the incidence of deductibility of the cost of labour based on a Italian tax of net value of production paid by companies (IRAP [Italian regional tax on productive activities, the revenue of which is connected to the financing of the national health service, a typical social security measure].

We consider IRAP as good example for two reasons. The first one is because, in the recent past, it has been affected by actions aiming at reducing labour cost. The second one is because the tax base it considers is similar to that of VAT, but without the deduction of labour cost:

---

[45] F. Oropallo, G. Proto, *L'impatto di alcune misure di riduzione del cuneo fiscale sulle imprese e sulle famiglie,* in "*Metodi e Strumenti a supporto delle Politiche",* Istat, Giugno 2006.

IRAP. As you can see in the upper part of figure 1 (see annex), the manufacturing sector pays the highest percentage of tax revenues. As it is implicit in the word, in this sector the workforce is larger than in others. Reading the lower part of figure 1, the break down of manufacturing, (see annex) the earlier observations have been confirmed: the higher the workforce, the higher the tax revenues. According to may statistics in this same economics sectors take place a larger part of both direct and indirect (how, e.g., happens in the southern Italy in the supply chain of textile industry) undeclared work. Except for labour cost, financial values (income and expense intrests) extraordinary operations (gains and losses), VAT and IRAP have the same tax base, so labour costs, in a way or in another will be translated into the final price. As such, who produces less security trade-off (e.g. because doesn't employ undeclared work) pays in place of who produces more (e.g. because either uses undeclared or precarious work). As it is intuitive, in the same way of who is used to hiring undeclared workforce, that produces a huge trade-off, that is dumped on enterprises with higher declared workforce, the same happens, in different measure, among companies, that are used to hire precarious work compares to who doesn't.

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

This paradox has been indirectly countered in Italy by law no. 296 of 2006 (known as the 2006 Finance Act) with which the government reduced the "tax wedge"[46] by acting on the social security taxable base. The method of obtaining this reduction by means of deductions and surtaxes on the IRAP taxable base is very technically complicated (Coppola[47]). Our interest is limited to its principles and effects of the transition between different tax systems on families and companies. The intervention of the law convinces us of the patency of the theory. The study by Oropallo and Proto (2006, 2006A) also shows the effects of the 2006 Finance Act with reference to the greater or lesser deduction of the cost of labour from the taxable base.

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

Look at the 5th quintile in figure 2 (see annex). Normally, labour costs are not deductible

---

46 Verbatim *"tax wedge"*. It represents the difference between the net remuneration received by workers and labor costs paid by firms. A significant part of this difference comes from the social security contributions paid by firms.

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

from taxable value in IRAP (red bar). The survey, as reported in the chart, makes the hypothesis to deduct either insurances tax (pink bar -CS1) or the entire labour cost (yellow bar -CL2). As you can see, the rate of reduction is much higher in the 5th quintile. This is the quintile that pays more tax, because it deducts less cost, i.e. the labour cost. If you compare the 5th quintile with the total you can observe a paradoxical effect: who contributes more to finance the social security system, and accordingly is less used to employing flexibly workers at the same undeclared workforce, pays more tax. Observing the percentage reductions by deduction of labour cost, you deduct more is employment - such as less security's need - more pay. Noteworthy, manufacturing industries (and it is possible to see better this in the set gone off below it), pay much more than all others (figure 2).

As has been seen above, transitions between flexibility models or between communities produce trade-offs. The multi-dimensional nature of flexicurity suggests pursuing the integration of different state policies, increasing the interaction between different element and different policies (labour law, labour market policies and social protection systems[48] (Vermeleyn-Hurley 2007).

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

In fact, this is a prerequisite that has been observed as “an important element in the reflection is the financial and institutional situation of each Member State which has an impact on reform possibilities. It should also be underlined that all reforms require not only a good deal of political courage but might also require time for them to bear fruit, depending on specific economic context. The possible transferability of other 'ideas' on flexicurity depends on economic capacity and institutional policy capacity, including actors, preferences, economic viability and political will to accept these reforms at different levels” (Vermeleyn-Hurley 2007).

To make the proposal less connected to the Italian system now we will refer and not only to IRAP but to VAT also which has a substantially uniform regulation at EU level. At the archetypical level, in fact, the two tax structures are equal in terms of the hypothesis.

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

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

Considering especially Europe 2020, according to «t*he revenue side of the budget also matters and particular attention should also be given to the quality of the revenue/tax system. Where taxes may have to rise, this should, where possible, be done in conjunction with making the tax systems more "growth-friendly". For example, raising taxes on labour, as has occurred*

[48] A. Parent-Thirion, E. Fernández Macías, J. Hurley, G. Vermeylen, *Fourth European Working Conditions Survey*, *Eurofound,* Luxembourg, Office for Official Publications of the European Union, 2007

in the past at great costs to jobs, should be avoided. Rather Member States should seek to shift the tax burden from labour to energy and environmental taxes as part of a "greening" of taxation systems»,

It follows that the hybrid system proposed would trigger a virtuous circle with the effect of reducing the difference in competition gained at the expense of security, producing these effects:

A very strong reduction in black market work, as it becomes less competitive and consequently, a higher revenue coming from surfacing of undeclared work, could be used to reduce tax on labour of the declared one.

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

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

This proposal, in terms of which has been above declinated it seems to be compatible with the approach of the Court of Justice of the European Union to social rights

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

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

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

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

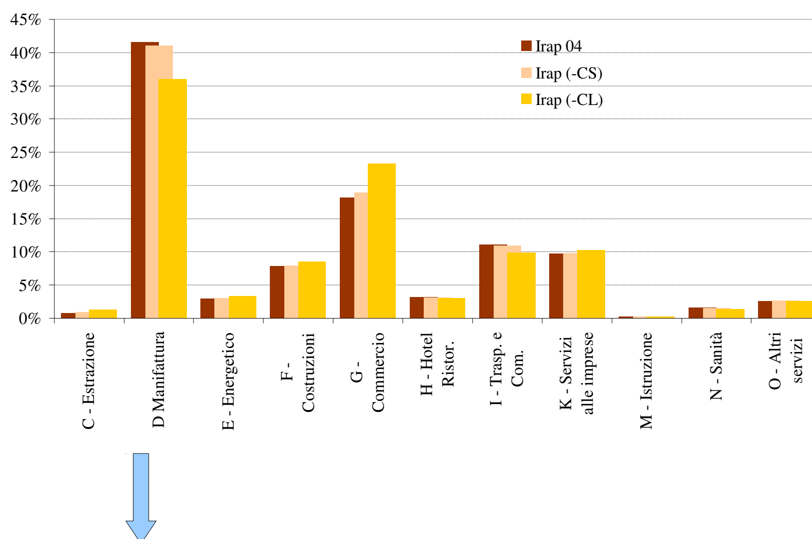
Nevertheless, even if only in relation to this suffocating interpretation, it is believed that the constitutionalisation of the fundamental social rights, in the proposed model, even if is disputable the unequal relationship between fundamental social rights and shared regulations on competition by the Court upheld, even if the subordination of the Charter to title VII of the Treaty is upheld, the hybrid model is in compliance with the primacy of title VII on social integration too, by enhancing the security component.

However, without a turnaround, the market, with its thirst of efficiency, seems look like a lot one of the those animals more equal than others, under whose command we know how is ended.

Therefore, this is based on the ILO Declaration of 2008 on decent work, it seemed necessary to find new relationships on the strength of which – albeit very generally – some essential rights could play a reconstructive role in governing the relationships between flexibility and security, i.e. relationships between the market and justice.

Annex

Figure 1 - upper
Composition of revenue (IRAP) by economics sector (values %)



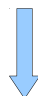


Figure 1 – lower
the break down of manufacturing related to revenue (IRAP)

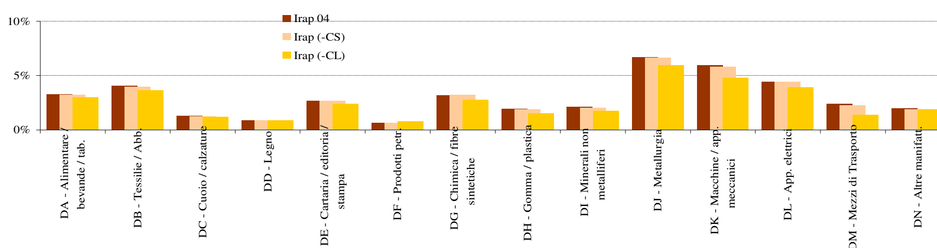


Figure 2
average Irap per quintile of companies list by A.V. per worker (€)