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# Flexicurity – the German trajectory

Berndt Keller\* and Hartmut Seifert\*\*

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## Summary

*The focus of this article is the concept of 'flexicurity', flexibility linked to social security. We shall look at the issue in terms of the institutional framework in Germany and as an alternative to pure flexibilisation. The central elements are the four related concepts of (i) transitional labour markets, (ii) collective bargaining and working time policies which safeguard employment, (iii) lifelong learning, and (iv) provision for old age. These can be looked at from an analytical perspective, as well as in terms of the periods of employment and of post-employment. Furthermore, we deal with different forms of atypical employment in terms of the concept of flexicurity developed here.*



**F**

## Sommaire

*Cet article traite du concept de « flexicurité », c'est-à-dire la flexibilité liée à la sécurité sociale. Ce thème sera analysé sous l'angle du cadre institutionnel allemand et comme alternative à la flexibilisation pure. Quatre concepts étroitement liés constituent les éléments importants de cette analyse : (i) les marchés transitionnels du travail, (ii) les politiques de négociation collective et de temps de travail qui préservent l'emploi, (iii) l'apprentissage tout au long de la vie, et (iv) les dispositions en matière de pensions de vieillesse. Ces concepts peuvent être examinés à la fois à partir d'une perspective analytique et en fonction des périodes d'activité professionnelle et de l'après-emploi. Par ailleurs, différentes formes d'emploi atypique seront traitées sous l'angle du concept de flexicurité développé ici.*



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## Zusammenfassung

*Im Mittelpunkt des Beitrages steht das Konzept der "Flexicurity", das Flexibilität mit sozialer Sicherheit verknüpft. Es wird hier auf die institutionellen Rahmenbedingungen der Bundesrepublik bezogen und als Alternative zur reinen Flexibilisierung diskutiert. Zentrale Elemente bilden die vier miteinander zu verbindenden Konzepte der Übergangsarbeitsmärkte, der beschäftigungssichernden Tarif- bzw. Arbeitszeitpolitik, des lebenslangen Lernens und der Grundsicherung. Diese lassen sich in analytischer Perspektive sowohl auf die Erwerbs- als auch auf die Nacherwerbsphase beziehen. Abschließend wird das hier entwickelte Konzept der Flexicurity auf die verschiedenen Formen atypischer Beschäftigung bezogen.*



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## The problem

The further flexibilisation of employment relations is regarded as a necessary condition of solving persistent labour market problems. These ideas, based primarily on the neo-classical paradigm (Unabhängige Expertenkommission 1991), meet with widespread agreement, at least in modified form (for a different opinion see: Eichhorst *et al.* 2001). If, in contrast to a number of other countries, such as the UK, the proposed prescriptions of further deregulation have politically been only hesitantly received in Germany, this is because of the feared social risks which may be expected from a relaxation or even elimination of established social standards. It is of special importance that the recent proposals of the Hartz Commission (Bericht 2002), along with the ensuing legislation, will have a stronger impact upon the regulatory framework than anything similar in recent decades.

The concept of flexicurity is intended to resolve the apparent irreconcilability of flexibility and social security. It has its roots in the Netherlands, where it has been developed and implemented since the mid-1990s<sup>1</sup>. In the meantime, the OECD and the EU have officially adopted this concept. The focal point is the concept of flexicurity, in terms of the institutional framework in Germany, as an alternative to pure flexibilisation. In what follows, we will use its basic principles for the benefit of the discussion in Germany, in respect of which the point of departure is normal employment. After that we distinguish different forms of flexibility and describe their consequences for social security (section 2). The central elements are the four related concepts of (i) transitional labour markets, (ii) collective bargaining, especially working time policies which safeguard employment, (iii) lifelong learning, and (iv) reform of pension systems. These are discussed in an analytical perspective and in terms of both employment and – often largely ignored in this context – post-employment. Finally, we shall apply our general concept of flexicurity to different forms of atypical employment which, due to their increasing spread, are receiving more and more attention in political and scholarly debates (section 4).

## Flexicurity as an alternative to deregulation

### Preliminary considerations

We shall abandon the common implicit assumption of homogenous labour markets and instead assume its segmentation according to specific criteria (such as qualifications, age or sex of the employee, or specific market or service requirements). For that reason it is necessary to avoid vague assertions about flexibilisation as such and to look at specific forms of it, distinguishing between the following variants. A well-known, fundamental distinction, which is related to the theory of the ‘new microeconomics of the labour

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1 With the Law on Flexibility and Security the Dutch government attempted to balance both aspects and ‘to improve the legal position of flexible labour while retaining flexibility’ (Pennings 1999: 153).

market' (Lindbeck and Snower 1988), differentiates in the first instance between external and internal flexibility. Conceptual work by the OECD (1986, 1989, 1990) divides the internal form into two further variants:<sup>2</sup>

- Internal-numerical flexibility in the case of fluctuating capacity utilisation relies above all on temporal adjustment of the volume of work with the help of working time accounts and employment-protecting working time reductions. In contrast to external flexibilisation (lay-offs) the number of employees can remain constant.
- Internal-functional flexibility, in the case of changing production requirements, relies primarily on adjustment of work organisation as well as suitably well-qualified employees. These options are not available in the case of strict 'work rules' and a lack of general training, as in the Anglo-Saxon countries.

External flexibility uses above all numerical personnel adjustments through the classical instruments of lay-offs and recruitment, along with, recently, increased fixed-term employment and temporary work. Analogous to the differentiation between internal-numerical and internal-functional flexibility we can distinguish two variants of external flexibility:

- External-numerical flexibility is based on the numerical adjustment of the workforce.
- External-functional flexibility is related to the workforce's ability to adjust to the external labour market, which in turn is a prerequisite of avoiding mismatch problems in the case of structural change.

Even if we look at this extension from a different perspective, and flexibility is no longer regarded exclusively in terms of the enterprise, these variants can nevertheless be integrated among the different forms of flexibilisation. This is substantiated by the fact that mismatch problems also affect the potential for employment flexibility. Apart from that, external-functional flexibility can bolster the business's external-numerical adaptability. Possibilities in this connection include, for example, 'outplacement' or 'transfer companies' (*Transfergesellschaften*) or activities of further training directed towards the external labour market.

Internal flexibility is more likely to provide solutions for problems of cyclical adjustment, whereas in cases of permanent structural adjustment external flexibility may be unavoidable. The choice of flexibilisation strategy favoured in an enterprise will be determined by the skill structures of its employees. From the point of view of human resources management those enterprises with large numbers of employees whose skills are specifically oriented to the requirements of the enterprise are more likely to favour

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2 Occasionally, the OECD (1986) characterises wage flexibility as another variant, which we will not consider in more detail. We shall not explicitly address issues of wage structure or its development; income adjustments are part of wage and business policy concerning employment protection. The grounds for this emphasis are supplied by empirical analyses which show that 'wage and employment development in production industries have proceeded largely independently of one another' (Bellmann *et al.* 1996: 55).

internal adjustment, whereas enterprises whose employees have more general skills will choose external strategies. It is therefore conceivable to pursue both strategies side by side, which could be efficient from an economic standpoint.

External and internal flexibilisation cannot only supplement but also substitute one another. 'Thus, there exists a trade-off between the two types of labour flexibility, and the precise combination of the two is governed by a host of factors. Seen in this light it is evident also that there do not yet exist efficient models of enterprise labour flexibility' (OECD 1986: 91). The way in which the different forms of flexibility are to be balanced in order to increase labour market efficiency depends upon the prevailing business conditions as well as general supply and demand on external labour markets (OECD 1986: 123, OECD 1989: 77). External flexibility is restricted by legal protection of existing employment and the adjustment costs which accompany it. Incentives to invest in enterprise-specific skills can favour internal as against external flexibility (OECD 1989: 76), but also the high costs of recruitment and the necessary adjustment of newly hired employees, which vary with relative scarcity in individual labour markets.

If this assumption of a substitutional relationship is correct – which earlier comparative analyses seem to bear out (Sengenberger 1987) – it is a priori a matter not of the flexibilisation of all, but rather of a cost-benefit and productivity-enhancing combination of different elements of employment conditions. For this reason a variable arrangement of working time in relation to the permanent workforce does not entail the complete abandonment of (limited) fixed-time or temporary employment among peripheral personnel. The basic principle of our suggestions is to limit peripheral employment and as a countermove to allow primarily internal flexibilisation in relation to core staff.

The point of departure of the following analysis is the thesis that labour markets will in future, on account of changed framework conditions, require a higher level of flexibility if they are to ensure efficient allocation. We shall take this assumption as a kind of 'given' which we shall not further analyse in what follows. For the moment it remains open what kinds of flexibility should have priority. In addition, we shall not only distinguish between different variants of flexibility, but also investigate the attendant risks and opportunities for employees.

The components of the concept of flexicurity which we are proposing are as follows:

- The enterprise must have adequate flexibility; the emphasis is above all on the internal variety.
- The employees must be covered by social security measures, not only during but also after the period of gainful employment, since societal acceptance of more flexibility depends upon expansion of the social security system.
- The adjustment capacity or 'employability' of employees on the one hand improves enterprise flexibility and prevents mismatching, while on the other hand it is in the interest of employees, since it increases their chances of adjusting to structural change.

These three components should be brought together in a balanced relationship.

Our goal of optimisation would not be satisfactorily met by proposals based on pure flexibilisation in accordance with the Anglo-Saxon model. This model, which is favoured above all in the US, contains a large measure of (primarily external) flexibility by way of ‘hiring and firing’, though it also suffers from serious gaps as regards social security. The frequent lack of healthcare, as well as the existence of a large group of ‘working poor’, are among the central problems which result from this model, which relies exclusively on the dominance of ‘market forces’ or on pure ‘flexibility’. The concept of flexicurity provides a balance, which we shall explicate and relate to the legal and institutional situation in Germany and then put in concrete terms in the area of atypical employment forms.

### Components of flexicurity

In our search for ways in which flexibility, which enterprises regard as necessary, can be combined with the legitimate social security interests of employees we will borrow a number of concepts which have recently been developed above all in the Netherlands (Stichting van de Arbeid 1996; Wilthagen 1998; Pennings 1999) and which at present are also making themselves felt in political debate (Riester 1999; Müller *et al.* 2001) and in scientific discussion (WSI 2000; Keller and Seifert 2000; Keller and Seifert 2002; Klammer and Tillmann 2002) in Germany<sup>3</sup>. These conceptual beginnings are partially empirically backed and ‘clearly reflect attempts towards a new approach, in which flexibility and security are considered as complementary rather than opposing concepts. Thus, the basic aim . . . was both to make individual employment relationships more flexible and to offer a reasonable degree of protection and stability to the workers who are parties to such relationships’ (Ozaki 1999: 122). What is new about this is above all the attempt to link policy fields which were hitherto organised and discussed in strict isolation from one another, namely labour market/employment and social security<sup>4</sup>. Centre-stage here is the recasting of the interrelationship between social security and employment issues.

In what follows we shall describe the central elements of a model of flexicurity and their combinations. At the same time, suitable safeguards should be designed for specific social risks or forms of employment. The following *four concepts* form the basis: (i) transitional labour markets; (ii) strengthening of internal flexibility through employment-protecting collective bargaining, especially working time policies; (iii) strengthening of functional flexibility through lifelong learning; (iv) reform of provisions for pension systems. The first concept constitutes the point of departure – notwithstanding the itemised critique which follows – since it is widespread in the debate on flexicurity and outlines a general framework which makes possible the integration of other components. The last

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3 Recently the European Commission, among others, has argued in a similar fashion, with the intention of bringing ‘job security and flexibility’ into ‘a new equilibrium’ (European Commission 2001: 8).

4 At the same time, divisions between fields or classical disciplines, such as labour law, labour market and labour policy, are also melting away.

concept, in contrast to the others, concerns the post-employment phase. Its design is growing in importance in individual calculations with regard to a social security system increasingly oriented towards personal responsibility. Independent of this development is the already mentioned problem of the pluralisation of employment forms. Our critique of the concept of transitional labour markets leads to concrete examples (ii and iii) as well as to specific extensions (iv).

## **Transitional labour markets**

### **Introduction**

The concept of transitional labour markets (Schmid 1994, 1999, 2000) abandons the constitutive criterion of unlimited full-time employment, the model of standard employment, as the exclusive reference point of employment, and tries to create smooth transitions between employment and non-employment (the phases of gainful employment and non-gainful employment). It points up the emergence of a new type of work ('flexible mixed work' as a combination of gainful employment, care work, community work, and personal interest activities [*Eigenarbeit*]) in transformed labour markets which are characterised by flexibilisation, pluralisation or individualisation and the breaking down of the border between gainful employment and non-gainful employment. The concept takes as point of departure a persistent lack of jobs within the framework of a new model of full employment with smooth transitions between different forms of work.

Transitional labour markets function in accordance with the principle of the reversibility of decision making. They make possible transitions in both directions, for instance between full-time and part-time work or between phases of employment and non-employment (for example, sabbaticals). Options for voluntary interruptions of employment (for example, for family reasons or for job-related or general further training) are also institutionally available. Such a productive 'temporary break from work' by way of smooth transitions between different forms of activity not only enables the realisation of individual options in terms of life plans, but also creates support bridges in the sense of temporary employment opportunities for outsiders who, while not attaining the status of insiders, nevertheless become 'entrants' and so improve their employment opportunities.

These 'employment bridges' can be supported by instruments of labour market policy, which partly have already been in use for some time (for example, transitional allowances, short-time allowances, job creation schemes, wage subsidies), and partly have been introduced recently (job rotation) or are still in the experimental stage, such as 'outplacement or transfer companies' (*Transfergesellschaften*) or combined-wages models (*Kombi-Modelle*).

The concept has both a quantitative and a qualitative orientation. The first relies on a socially supported 'redistribution of the lack' of available jobs in periods of high



unemployment. If you want to reduce the labour supply, whether temporarily or permanently, but without stimulating demand or being able completely to eradicate the current imbalance between labour supply and demand, then a coordinated monetary, finance and wage policy stimulating growth remains necessary. Qualitatively, the aim is to improve the adaptability or 'employability' of employees, as well as adaptability of enterprises, thereby making it possible to cope with structural change.

## Critique

The concept of transitional labour markets has spread rapidly in recent years in institutionally oriented contributions to labour market and employment policy. There has so far been no critical debate on this fairly vaguely formulated programme, although this would be necessary in order to further develop, improve, and concretise this innovative and promising approach. The principal points of criticism are as follows:

1. This concept, which is not absolutely new in every respect, has, despite a certain amount of 'borrowing' from current approaches (for example, Insider-Outsider theories, especially in the form of Outsiders whom we at least might want to become 'Entrants'), no systematic foundation in labour market theory and has so far not been adequately operationalised. In an analytical perspective it remains fuzzy, in that it attempts to establish a link between 'flexibilisation' and social protection, especially in the gainful-employment phase, without, however, distinguishing explicitly between different forms of flexibility. Above all, the enterprise perspective on flexibilisation remains neglected, while the employee's viewpoint dominates. This differentiation, which is carried out in other analyses (OECD 1986, 1989; Bellmann *et al.*, 1996), is, however, necessary on a number of grounds: the above-mentioned variants of flexibility not only have different cost-benefit effects and are suitable for different segments of labour markets, but they also require different means of implementation (Sels and Van Hootegem 2001). Finally, the concept is based on a very broad notion of 'labour market', which not only, in the customary sense, is aimed at different bridges between various segments, but also includes diverse transitions into non-market spheres (such as honorary posts or households) which ought to make possible temporary exchange.
2. Possible employment effects, or, more concretely, contributions to reducing unemployment or the achievement of a new definition of full employment, are often studied, and repeatedly also assessed (Schmid and Auer 1998: 18; Schmid 1999: 140). Quantitative details concerning the 'employment potential' of the proposed measures, which surprisingly often operate with variations of working time and regulations and less often with other parameters, are not comprehensible in every aspect; they are not discretely formulated in every listed category but rather overlap. On the whole, they are fairly optimistic or appear to be considerably overrated, which could lead to unrealistically high expectations in relation to their possible employment effects.



3. The concept, among other things in its stringing together of instruments, represents rather a heuristic or classificatory scheme than an already fully developed and empirically well-grounded action-concept of labour market and employment policy. Instead of including every option it should exclude some possibilities in order to avoid the suspicion of being an empty formula. Above all, the smooth transfer of individual instruments which have proved themselves in other countries (for example, the oft-cited job rotation in Denmark) in the form of best practices can run into legal or institutional limitations or difficulties of implementation in other countries. Solow (1990) characterises labour markets – in distinction to pure neoclassical analyses, which in relation to institutions in the broad sense are rather undifferentiated – as ‘social institutions’. If the necessary institutional preconditions are lacking (for example, sectoral facilities for further training for the purpose of job rotation or childcare facilities to enable a significant increase in part-time work in Germany) certain instruments which have been very successful under other labour market regimes cannot be introduced – or at least not until these preconditions have been established.
4. Strictly in a strategic perspective the concept attempts, by way of a number of different proposals, not only to achieve a high level of flexibility – above all in the gainful-employment phase – but also to provide this with adequate social security provisions. With this emphasis it seems to rely more on external than internal forms, without, however – as already mentioned – differentiating in respect of their functional connections. In fact, it makes important contributions to the problem of the transition between the phases (for example, regulations on flexible partial early retirement instead of complete early retirement regulations), although it does not deal with social security issues or emerging social risks in the post-employment phase. This gap represents a clear disadvantage, especially as both the number and the proportion of discontinuous – based among other things on part-time and other forms of atypical employment – periods of gainful employment, due to the progressive tertiarisation of the economy, as well as the deregulation and flexibilisation of the labour market, will further increase. This development could lead to long-term problems in relation to old-age provision.

Despite these criticisms we accept the following basic principles embodied by transitional labour markets in our further consideration of flexicurity: the creation and support of transitions between different forms of paid and unpaid employment, in respect of which the principle of the reversibility of decision-making should hold; socially protected redistribution of available jobs; and the improvement of ‘employability’ and ‘adaptability’.

### **Strengthening of internal flexibility: employment-protecting collective bargaining and working time policy**

If one assumes that an enterprise must have at its disposal a certain degree of flexibility in order to be able to react to external market changes quickly and at a reasonable

cost, there are, as already explained, forms of both external and internal flexibility. What forms of flexibility are effective can ultimately only be determined by experience. It may be observed that, by international comparison, internal flexibility has been highly valued in Germany<sup>5</sup>. Especially since the 1990s, actors at the sectoral as well as the enterprise level have expanded the scope of internal flexibility and have introduced new instruments of adjustment (for example, enterprise alliances for jobs, opening clauses in collective agreements). The new possibilities can partly substitute external flexibility and so provide employees with a higher degree of employment security (Mauer and Seifert 2001). In this connection the following pointers are particularly important:

1. Since the mid-1980s the parties to collective agreements have gradually expanded the scope for variable forms of working time. On this basis enterprises were able to introduce various types of working time accounts. In contrast to uniformly distributed normal working time they make it possible to adjust working time in accordance with fluctuations in external markets, without giving rise to higher costs for overtime or the recruitment and on-the-job training of additional workers, or, on the other hand, for their dismissal (Seifert 2001).
2. Following the model of the employment-protecting reduction in working time (four-day week) agreed at Volkswagen in 1993 many collective agreements have made it possible, within the framework of opening clauses, to diverge from agreed standards in respect of both working time and earnings (Bispinck 2001). As with working time accounts enterprises can adjust – quickly and at reasonable cost – the volume of labour in the case of declining capacity utilisation in accordance with the principle of the *'atmende Fabrik'* or 'factory pausing for breath' (Hartz 1996). Thus, forms of internal flexibility can here either supplement or substitute those of external flexibility.

As a rule, internal-numerical adjustment presupposes, as empirical research indicates (Bellmann *et al.* 1996: 42), internal-functional flexibility. Reductions in working time in order to save jobs are combined with transfers within or partly even between firms which, however, presuppose appropriate skills. Based on the high proportion of workers with vocational training, in all likelihood different working tasks can be covered within the firm (internal-functional flexibility).

Internal flexibility can, in comparison with external flexibility, offer advantages to both employers and employees. Firms avoid dismissal and reemployment costs which they would otherwise incur; maintain team productivity, in contrast to dismissals; and ensure the amortisation of investments in human capital. Employees can keep their jobs including their enterprise-specific human capital in the case of cyclical or seasonal fluctuations

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5 In Germany enterprises (84%) react more strongly than in other European countries (70% on average) to capacity fluctuations with working time adjustments. On the other hand, only 35% of German companies resort to adjusting the number of employees as against a European average of 40% (European Commission 2001). These findings substantiate earlier research results in Germany (Bellmann *et al.*, 1996: 42).

in demand, and in that way enhance their chances of participation in enterprise-specific further training and technical as well as organisational development. In addition, they avoid fluctuation costs. Greater employee stability, however, comes at the price of temporarily reduced earnings and/or uneven distribution of working time.

The strengthening of internal flexibility is more suited to solving seasonal or cyclical employment problems, while transitional labour markets aim also at the solution of structural problems. To that extent they can supplement one another, even if they partly represent two different points of view. In contrast to the idea of transitional labour markets internal flexibility approaches also take into account business-policy interests and goals. Internal-numerical flexibility reduces the risk of redundancies but can give rise to earnings problems which become more serious the lower the wage level. If this model is adopted on a long-term basis it can therefore result in problems for pensions provision.

For this reason it may arise that the internal flexibility approaches might not meet with the acceptance of those employees occupied in the low-wage sector, or in companies with a high proportion of part-time employees.

### **Strengthening of functional flexibility: lifelong learning**

If in the future employment becomes more unstable, and at the same time more self-responsibility is demanded of employees, the concept of *lifelong learning* offers ways of safeguarding and improving the adaptability of employees. This fits in with the European Commission's current debate on improving 'employability'. This approach relies less on the safeguarding of a given workplace (job security) than on individual employment capabilities in both internal and external labour markets. At the same time, it represents one of the four pillars of the coordinated European Employment Strategy under the employment chapter of the Amsterdam Treaty (Keller 2003a).

Conceptual debate concerning the application of lifelong learning has yet to get off the ground. The actors gathered under the 'Alliance for Jobs' – federal government, employers' associations, and trade unions – proposed the establishment of long-term accounts in which time credits can be saved for vocational training. The important policy question of what resources shall be available in respect of these time elements, reserved for learning purposes, remains open. The initial considerations concern the outlining of an approach to learning-time accounts which will constitute the organisational basis for lifelong learning as far as time is concerned (Seifert 2002). As a first step existing legal, collective agreement and enterprise-specific leave rights should be combined. They should form the basis of individual learning-time accounts. Future collective agreements, as recently in the chemical industry, should include further time elements.

Learning-time accounts, which provide a minimum level of leave for vocational training for all employees, would reduce the risks of unstable employment and at least provide initial conditions promoting mobility and flexibility on the labour market. This would improve the chances of groups which have so far been largely excluded from enterprise-

specific training (part-time employees, fixed-term employees, the poorly qualified) to prepare themselves for new jobs, above all in the external labour market. Improved access rights will not, however, automatically mean the end of selective training.

### Reform of provision for old age: flexible entitlements or basic provision

The fourth element of our concept of flexicurity is not directly linked to the different forms of flexibility, but leads beyond it. Of fundamental significance for what follows is the distinction between social security provisions *during* the period of employment, which is what we have looked at so far, and social security provisions *afterwards*, which is what we shall look at now. In this way we shall expand the existing range of concepts.

Social problems in the post-employment phase may in future arise as a consequence of the flexibilisation of employment forms since in Germany the standard employment contract (*Normalarbeitsverhältnis*) and social security systems – disregarding a few exceptions such as considering the period of bringing up children as a compensation mechanism – are still relatively closely linked (*principle of equivalence*). In fact, the share of employees out of all dependent employees who are liable to contribute to social security in the social security pension insurance scheme has fallen in the last 20 years from around 85% to 80% (BMA 2000)<sup>6</sup>. However, there is still nothing on the necessary *level* of protection for independent subsistence. Despite the existence, in principle, of the social security system it could by all means lead in the medium or long term to poverty in old age or to claims for social assistance when the insurance basis is too narrow due to changes in form of employment (for example, part-time work or exclusively short-time employment during a significant part of the gainful employment phase or in the case of longer and/or repeated interruptions of employment as a result of unemployment).

Problems will arise for pension provision when no other incomes (for example, capital incomes or life insurance) can be obtained or no combination with other pensions (for example, survivor's or enterprise pension) arranged. These problems of atypical employment, which, in contrast to those of demographic change (shift in the population age structure), are seldom addressed in the current discussion, will in future increase, since there is likely to be further differentiation or heterogeneous forms of employment career. Answers to these problems can be sought in two different directions, namely through the concept of flexible entitlements currently being developed or through the already existing concept of basic provision. One more recent concept concerning flexible entitlements for intermittent periods of insurance contributions, will reorganise or modernise the social security scheme in order to increase the 'flexibility' of employees, as well as to create the 'adaptability' for structural change (Langelüddeke *et al.* 1999; Rabe and Langelüddeke 1999)<sup>7</sup>. According to this proposal the continuity of gainful

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6 This decline is essentially due to the rearrangement of statistics on the gainfully employed, which includes employees who are exempt from compulsory insurance more strictly.

7 The present system relies basically on two parameters, the length of employment and the level of income. The longer the total period of employment and the higher the earnings the higher the pension.

employment should no longer be rewarded, as hitherto; instead, more individual incentives for the necessary flexibility and mobility ought to be created through the extension of pension credits for periods with low or missing income. The core idea of this proposal is as follows: ‘each insured person can be credited with up to five years as flexible entitlement periods, with which he or she can close up gaps in their individual career of employment. Regardless of the reason for the gap the flexible entitlement period will be assessed as if the insured person has had average earnings’ (Langelüddeke *et al.* 1999: 10). Periods of employment with below average contributions can be topped up by means of the new form of entitlement.

Gaps in the individual ‘employment biography’ would no longer lead to clear deficits in social security provisions, regardless of the reason for it (such as raising children or further training). Those who would benefit most from such adaptations to non-permanent employment careers would be women, whose still existing gender-specific disadvantages would be diminished, if not eliminated, and for whom the aim will be an independent old-age provision instead of the derived claims hitherto in place. Distribution effects – which are very much intended – in favour of insured persons with interrupted periods of employment and phases of low earnings would thereby result in all current pensions or pension entitlements becoming ‘a little lower’ in value.

We take the concept of basic provision as an alternative approach for two reasons:

1. It can strengthen individual incentives to leave the labour market temporarily and/or partly (through part-time work) for various reasons and create positive external effects in the sense of employment opportunities for the unemployed, since in contrast to current regulations only limited disadvantages in the post-employment period result from this, namely in relation to pension level.
2. It supplements the hitherto open social security elements, not covered in other proposals, of flexicurity in the post-employment phase. It should reduce the risk of possible old-age poverty resulting from long-term atypical employment and guarantee independent provision, not derived from the (male) ‘breadwinner’.

The basic future alternative for policy-making goes far beyond a narrow labour market perspective, though it is none the less closely linked with it. One option is the retention of the current, in international comparison extensive and relatively strict, coupling of gainful employment and social security provisions, the other the more or less extensive decoupling. Recognition of the need for re-regulation implies a priori no decision in favour of a pure basic provision or a combination of social security, enterprise-based models and purely voluntary private provision.

These strategies can also, as in Switzerland’s universal system, be combined. The central idea is this: it is meaningful on employment policy grounds for the continuing reform debate on the future of pension provisions to take into account, alongside the demographic aspects, the changes in the employment system due to the introduction of elements of basic provision sketched here.

Countries with other institutional arrangements, without the fairly close coupling of the standard employment contract and social security provisions typical of Germany and built on models of basic provision not linked to labour market activity (as in the Netherlands or Switzerland), have less need to take action in this connection. In concrete terms: the strong increase in part-time employment (over 40%) in the Netherlands was an explicit aim of employment policy; it gives, however, rise to fewer negative external effects for old age provision than is the case in Germany under the current legal circumstances. From the employees' point of view it is more attractive to change from full-time to part-time work if long-term negative consequences in the form of drastic reductions in pensions are not to be expected.

To this extent the effects of flexibilisation or the consequences of the 'erosion of the standard employment contract' show quite considerable country-specific differences, which any institutionally oriented analysis must take into account. Incidentally, the extension of existing basic provision elements (for example, in Switzerland) due to existing path dependencies should be easier than their introduction.

## **Social security and atypical employment**

The four components of a supplemented, comprehensive concept of flexicurity discussed so far constitute a general approach to the social protection of employees, or more precisely: employees with standard employment contracts. In what follows we shall relate these four building blocks to different forms of atypical employment (particularly part-time employment, short-time employment, temporary work, fixed-term employment, new self-employment) since these are, in comparative perspective, in particular need of social protection (Zukunftskommission der Friedrich-Ebert-Stiftung, 1998: 292ff).

Variants of atypical employment are generally directed towards the extension of flexibility, or more accurately – with the exception of regular part-time work – of forms of external-numerical flexibility in the sense already defined, through the extension of non-normal employment. They do, of course, not solve the problems of adequate social security, in the sense of flexicurity, which arise with its introduction.

Atypical employment has increased since the early to mid-1980s, not evenly but in the aggregate (Keller and Seifert 1995), and may now account for around one-third of existing employment relationships (Schäfer 2001: 20ff), which clearly shows the urgency of finding solutions. Women account for a disproportionate amount of such employment, with the sole exception of temporary work, so that the concept of flexicurity here clearly contains a gender-specific component. The trend-wise increase of these forms will presumably be further strengthened in coming years by changes in the current 'laws for modern services on the labour market' as a consequence of the proposals of the Hartz Commission (Bericht der Kommission 2002); they rely more on external than on internal variants of flexibilisation. Their medium- and long-term effects, particularly on the problem of social security and its financing, can barely be estimated at present. It is quite likely, however, that they will increase the already existing difficulties (Keller 2003b).



We shall explicitly differentiate between atypical and precarious employment: precariousness is here associated with a lower level of social security in comparison with the standard employment contract in the sense given above, which encompasses both the employment and the post-employment phases. Our aim is to take away the precariousness from atypical employment relationships, not to eliminate such employment or to contain it at any price. They can form ‘bridges’ between unemployment and employment, make ‘Outsiders’ into ‘Insiders’ or at least ‘Entrants’, and to that extent can constitute elements of the concept of flexicurity sketched here.

We start out from the restrictive premise that with the help of the proposed measures the risks of atypical forms of work will diminish, but not be fully eradicated. This restriction will last for at least as long as the labour market finds itself severely unbalanced. The problems of atypical employment which we are about to examine would not be entirely solved by full employment, although they would be much less serious than under mass unemployment. With this qualifying remark we would like to preclude any possible illusions concerning regulation. Changes of legal forms do not automatically lead to equivalent changes in reality. If one again distinguishes between the phases of employment and post-employment the risks of the first phase are related to both the level of income and job security, those of the second phase to pension level (Zukunftskommission der Friedrich-Ebert-Stiftung 1998: 304ff). Apart from that, atypical employees are largely excluded from enterprise specific measures of further training.

The problems in the employment phase include the fact that forms of atypical employment cannot provide security of adequate, independent subsistence. This applies particularly to part-time work in the broad sense, though not necessarily to temporary work. Problems for the post-employment phase arise above all from the fact that own contributions, by reason of the situation – with low and/or changeable income – cannot be adequate. These already existing difficulties will increase if the supplementary provision increases in importance.

## **(1) Part-time work**

Part-time work, which is by far the most prevalent form of atypical employment, has increased with the integration of women in the labour market; its proportion in Germany at present is around 25% (including marginal part-time employment, below a minimum number of working hours per week) which in EU comparison corresponds to a place in the top third (Europäische Kommission 2003). Part-time employment, which above all increases internal-numerical flexibility, can, from the employees’ standpoint, on the one hand be seen as a ‘bridge’ to the labour market (for example, entry or re-entry; Klammer and Tillmann 2002), and on the other hand become a ‘trap’ in terms of income. In the case of involuntary part-time work this is already so in the employment phase and certainly in the post-employment phase, for which general pension claims can in fact be made, but not at a high enough level for independent subsistence. In the case of voluntary part-time work not imposed by external – for example, family – exigencies,



and which lasts over a long period, the income problem can arise in the post-employment phase.

The following approaches, which should be regulated both inside and outside the enterprise, promise to improve the socio-economic situation of part-time employees:

- Transitions in the form of employment bridges (in the sense of the concept of transitional labour markets) offer entitlement rights to part-time work and a return to full-time work in order to have options in changing life and income situations. Some rights of this kind excluding, however, the right to re-extend working hours, were recently anchored in the Law on part-time work<sup>8</sup>.
- General claims to participation in measures of enterprise-specific further training within the framework of collective agreements provide opportunities to counter decoupling from the internal labour market or its career ladders.
- The concept of flexible entitlements, also that of basic provision, can, in a long-term perspective, ameliorate or even eradicate the threat of old-age poverty as a consequence of low contributions.

## (2) Marginal part-time employment

Short-time employment, a specific variant of part-time work with working time and income below a certain level (formerly 15 hours or €325), is primarily aimed at increasing internal flexibility. It grew considerably in the 1990s; the Law on the reform of short-time employment relationships introduced the obligation to make social security contributions in 1999. At the beginning of 2003, when the Hartz reforms were introduced, the income level was increased to €400 and the hours restriction abolished. These incomes carry no obligation to make either tax or social security contributions for employees; employers pay in total 25% social security contributions (12% health insurance, 11% pension insurance, 2% tax).

In the area of domestic services (cleaning, etc.) so-called mini-jobs have been created for which private individuals simply pay 12% contributions and can annually deduct up to €510 from their taxable income. The aim is to reduce illegal employment. Between mini-jobs and regular part-time employment a new 'transitional zone' has been introduced (for monthly incomes of between €401 and €800). Employees pay relatively low, gradually increasing social security contributions; employers pay normal contributions. The aim is to avoid the so-called 'low-wage trap'<sup>9</sup>.

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8 Law on part-time and fixed-term employment contracts and towards the amendment and abrogation of labour law provisions.

9 Since the introduction of the new regulation regarding mini-jobs there has been a sharp increase in this kind of employment. This development mostly results from employees subject to compulsory insurance because of regular jobs and doing second jobs, but also from students and pensioners. In contrast, however, very few former unemployed persons have been employed (Knappschaft 2003).

- Low income remains the critical variable – in so far as it is not a matter of an extra income – even after the limits were abolished. This situation can give rise to problems of securing an independent level of subsistence (*‘working poor’*), and certainly generate difficulties in the case of *independent* old-age provision. A distinction must be made between main and secondary jobs: if there are existing claims from another, main job that is subject to social security contributions there is no need for further provision, derived from the second one. The real problem group consists of those employees who over a long period are engaged exclusively in short-time employment. They will because of the principle of equivalence even in the case of a (henceforth inclusive) insurance obligation barely attain pension claims adequate to ensure material existence<sup>10</sup>. This fundamental problem can ultimately be solved only by models of basic provision.
- The already mentioned Law on part-time work (cf footnote 7) offers transitions to subsistence-ensuring regular part-time or full-time work.
- Claims in respect of further training measures must be organised outside the enterprise on account of the specific character of this form of employment (chiefly its concentration in a few, frequently small-enterprise based branches of the service sector).

### (3) Temporary work/personal service agencies

Temporary work represents a three-way relationship in contrast to all other forms of *employment*: the employee has a regular employment contract with a temporary employment agency (*‘hirer’*), but works for a limited time for another company (*‘borrower’*) and is under its authority<sup>11</sup>. It can have a similar *‘bridging function’* to part-time work, in so far as the hiring firm regards the hiring period as a kind of trial period (*‘screening device’*) for a permanent employment relationship. The absolute number of temporary employment relationships – with barely 1% of all dependent employees – is still low, nevertheless its growth rates were considerable for many years. At present, all local employment offices are being fundamentally restructured and transformed into job centres *‘for all labour market-related services’*. All job centres must set up, as new business units, so-called *‘personal service agencies’* (*Personalserviceagenturen* or PSAs), charged with breaking down entry barriers and reintegrating the unemployed in the *‘first’* (or regular) labour market. PSAs hire out employees to private firms with the aim of getting them taken into regular employment.

In the case of legal temporary work, which is directed towards increasing external-numerical flexibility, there are no particular social security or employment risks<sup>12</sup>. First,

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10 A possible scaling up on a voluntary basis of the employer’s overall contribution is rarely realised by the employees.

11 The maximum possible duration of *‘hiring out’* has been increased several times since the introduction of the Law on employment promotion in 1985 and currently stands at 24 months.

12 There is, however, one specific problem. Since the average income for temporary work is around 30% below comparable activities (Rudolph and Schröder 1997), income problems for those in the low-wage bracket cannot be ruled out.

the – according to current knowledge (though it is statistically difficult to capture) – considerable misuse of this form of employment has caused employment instability. Above all, violations of the prohibition on limiting the duration of the employment relationship with the temporary worker to the first temporary hire to the ‘borrower’ – have been frequent.

- Old demands for a strict prohibition are diminishing due to rapid expansion of this form. A more appropriate strategy is the legal and/or collectively agreed safeguarding of income and working conditions in the sense of equal treatment with the regular workforce of the hiring company. Here belongs also the socially acceptable shaping of remuneration in accordance with the reference wage principle, as, for example, in the Netherlands – and independently of the period of hire. A first, albeit hesitant step in this direction was the Job-Aktiv law which introduced this regulation after 12 months and so only for a small proportion of temporary workers. For workers hired out by PSAs there is a collective agreement which permits a particular ‘entry’ wage only for the long-term unemployed for a limited period.
- Furthermore, entitlements to further training which are to be legally established and/or to be stipulated by collective contracts not only improve *individual* ‘employability’, but also help to bridge slack periods for the temporary employment agency in order to diminish the employment risk and to improve the opportunities for employment in higher value activities.
- The external flexibility attained by temporary employment can, incidentally, at least partly be substituted by internal flexibility within the framework of employment-protecting working time reductions, as well as working time account schemes (‘factory pausing for breath’ – ‘*atmende Fabrik*’).

#### (4) Fixed-term employment

The usual legal regulations on protection against dismissal naturally do not apply to fixed-term employment; contracts automatically expire after a determinate period. The maximum possible period has been increased several times since the mid-1980s and now stands at 24 months. The proportion of fixed-term employment relationships has increased only gradually since the mid-1980s – to 10% in 2001, according to the German microcensus. Fixed terms have a double function. On the one hand, they serve as ‘bridges’ to permanent employment in the form of extended trial periods; on the other hand, they can also constitute ‘dead ends’. More frequent and longer periods without gainful employment inevitably lead to problems in terms of level of entitlement to pensions. A further disadvantage lies in the extensive exclusion from enterprise-specific training measures (including career opportunities) and the lack of severance pay.

In an effort to limit the extent of fixed-term employment, as in the case of temporary work, attempts are made to substitute external flexibility by internal flexibility as much as possible.

- Further training measures can bridge periods of inactivity between periods of fixed-term employment and must be publicly subsidised since solutions in accordance with the terms of collective agreements *ex definitione* do not suffice. Job rotation models, such as those introduced by the Job-Aqtiv law, create employment opportunities for the unemployed, at least for limited periods. Thus, they improve the ability to rejoin the labour market (in the sense of increasing internal flexibility), while they maintain or improve individual human capital.
- Low entitlements to pensions which arise due to phases of inactivity can be compensated by flexible entitlements within the present system or by a fundamental reform towards a basic pension fund.

### **(5) Sham self-employment/new self-employment: ‘Me Ltd’ (*Ich-AG*)**

Quantitative data on the extent of this form of atypical employment are scarce; however, there is good reason to suppose that the number of new self-employed increased significantly in the 1990s and now encompasses several hundred thousand people (Dietrich 1999). Alternation between dependent and independent activity, even if only of a temporary nature, will increase in future (Klammer and Tillmann 2002: 155).

A new (from 2003), provisional form of self-employment is the *Ich-AG* (‘Me Ltd’) or *Familien-AG* (‘Family Ltd.’) (with an annual income of not more than €25 000 or €50 000), which can be established by unemployed persons. Support services are available for up to three years. The main aims are to legalise illicit labour through transfer to regular employment and the promotion of self-employment.

For the time being, there is a need to formulate criteria which are more operational and as clear-cut as possible concerning the delimitation of new and real self-employment (for example, subject to instructions, working for a single customer, employment of an employee subject to compulsory social security contributions). The current definition under the Law on the promotion of self-employment (Knosp and Marx 2000) offers practical starting points.

- While there are a range of forms of help for transitions to self-employment (for example, bridging money, credit programmes), whether from unemployment or dependent employment, in the case of failure there is a lack of comparable instruments for the reverse direction (above all, further training opportunities).
- Those belonging to the ‘classical’ forms of self-employment (general practitioners, lawyers in private practice) are excluded from the collective compulsory social insurance system, since they supposedly have the ability, due to their income and property situation, to make individual provision in professional insurance systems<sup>13</sup>. As a result, at least in respect of pensions, the in practice difficult differentiation between self-employment and sham self-employment is superfluous.

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13 Problems of the system of social security in general and of its financial sustainability in particular are beyond the scope of this article.

The 'new' self-employed (for example, consultancy activities, franchisees), in contrast, should be subject to compulsory insurance since this 'assumption of affluence' on the grounds of their income situation does not exist and so the risk of 'old age poverty' cannot be definitively ruled out (see, from a legal perspective, Welti 2001a and 2001b).

## Concluding remarks

The concept of flexicurity sketched here appears to us well capable – since it links demands for flexibility with elements of social security – of leading the ongoing deregulation dispute out of its current dead end, and of opening up the public and political discussion carefully in the direction of a necessary re-regulation, in the sense of an improvement of social protection. Incidentally, measures for the improvement of flexicurity would be easier to implement than those of deregulation since they take greater account of the different interests of various actors.

An important argument against the concept of flexicurity developed here is the question of its translatability or realisability, which has not yet been clarified. However, the given examples and successes of other western European countries (above all, the Netherlands and Denmark) show that the approach is able to cope with the realities of the labour market and pension insurance systems.

Incidentally, not all the aspects we have discussed must constitute zero-sum games. In the case of particular approaches (for example, employment-protecting collective bargaining and working time policy, lifelong learning) positive-sum games are very much possible. A change in the framework conditions not only gives rise to costs, but also produces both individual and collective benefits for employers and employees. The circle of corporate actors includes, also during periods of 'decentralisation' and transfer of competences from the sectoral to the enterprise level, not only the parties to collective agreements, but also the state, which recasts framework conditions or changes those that have become obsolete. What is important is to create options for private actors, not to put obstacles in their way.

Finally, the flexicurity approach is not without consequences for the permanent workforce and so for the future development of the standard employment contract. The effects arise from the basic philosophy which prefers internal to external flexibility. Enterprise-specific adaptations through fluctuating work periods, transfers to other workplaces, or employment-protecting working time reductions are not without consequences for the time, skill-specific, and also financial adaptability of the permanent workforce.

On the whole the concept of flexicurity as outlined here redistributes the burden of adjustment processes. In contrast to external flexibility, internal flexibility places more claims on the workforce within the enterprise and lessens the challenge on the

mutually supporting contributors to unemployment insurance: the enterprise and employees with social security obligations. The challenge to labour market policy is the organisation of transitional labour markets. The costs which are incurred can (at least partially) be balanced against savings in unemployment contributions, and the employer also sees an improvement in efficiency when sub-optimal employment can be avoided. At the same time higher income can be realised for employees if they manage to achieve a friction-free transfer to the new order of structural change on the labour market. Costs are incurred when a basic level of social protection is introduced which in turn makes certain forms of external flexibilisation attractive and so enlarges the scope for adjustment within the firm.

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