

## **Non-Standard Employment and the New Standard Employment Contract: Reflections from a Transitional Labour Market Point of View<sup>1</sup>**

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‘Flexicurity’, the flagship of the European Employment Strategy, does not appear in the title of this essay. The simple reason is that this oxymoron is more confusing than illuminating. It invites to cheap talk and opportunistic use for various political interests, the opposite of what is expected from analytical and deliberative reasoning. All what ‘flexicurity’ is about at the end of the day is how to ensure decent jobs for all in a world of work that requires both: more flexibility and new securities for the related higher risks. Not only employers, also workers need flexibility. For more and more people continuous full-time jobs get out of reach or are even not preferred in order to fit market necessities with a satisfactory social life. Not only workers, also employers need security. High quality production, reliable delivery just in time, adjustment to new technologies and markets require the security of a skilled, flexible and devoted workforce that does not opportunistically take every chance to jump to another job.

The employment contract is the main institution to balance these conflicting as well as complementary interests of employers and the employees. The main research questions, therefore, is how to adjust the employment contract to the changing world of work as well as to the changing preferences over the working-life. I try to respond to this challenge by asking four related sub-questions: Why do we need a new standard employment contract? Are there any alternatives to the

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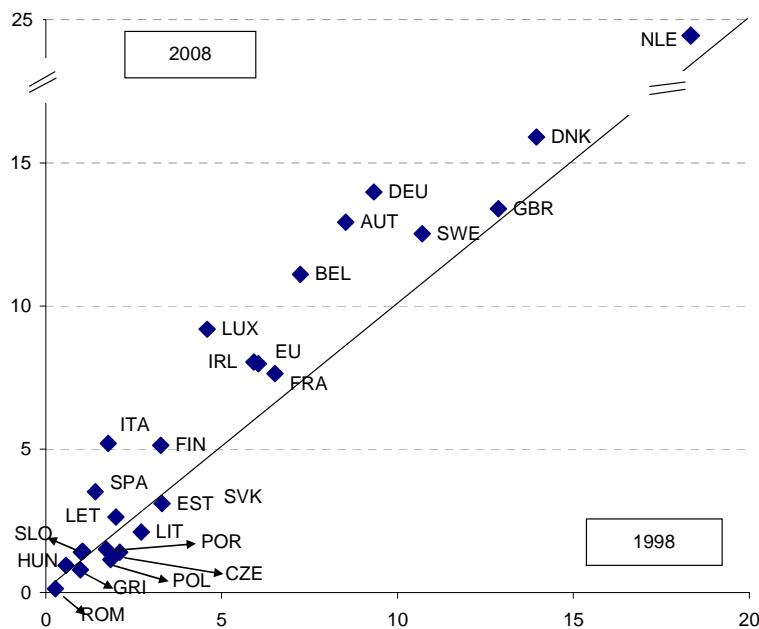
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'old' standards? What does theory suggest for 'new' standards? How can we improve the governance of so-called 'flexicurity'?

### 1. *The erosion of the standard employment contract*

The answer to the first question is simple: We need a new standard employment contract because non-standard employment forms are increasing. Before providing some evidence, attention should be given to the measurement of the following figures: They all represent levels and not shares. The part-time employment rate, for instance, equals part-time workers as percent of the working-age population.

*Figure 1: Part-time Employees (only with open-ended contracts, and without self-employed) as Percent of Working Age Population (15-64), 1998 and 2008*

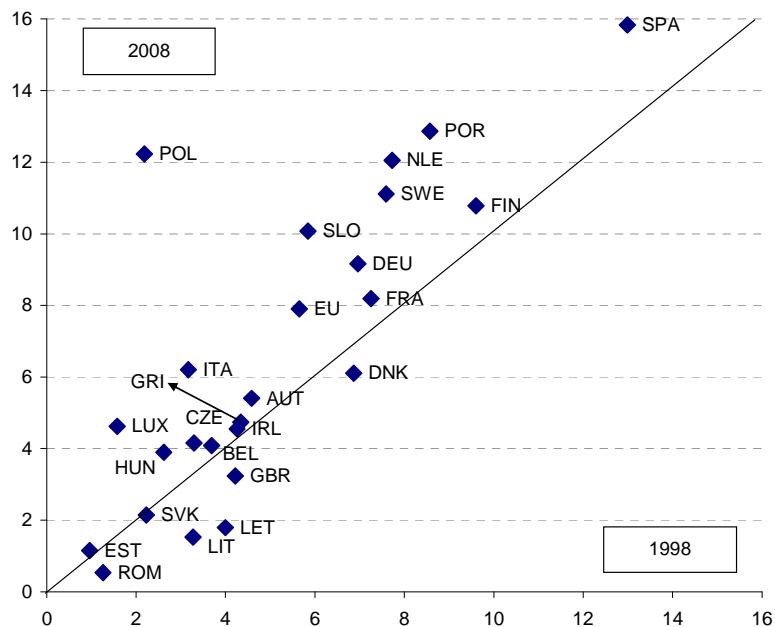


Source: Eurostat, own calculations

Figure 1 compares the part-time employment rates in European countries at two points of time: the horizontal axis shows measures for 1998, the vertical axis for 2008. Countries above the diagonal, therefore, show an increase and countries

below the diagonal a decrease of part-time work. Netherlands, of course, is the champion: almost a quarter (25%) of the working-age population is employed in part-time. And as in most other countries, part-time is still increasing. But the new member states of the EU like Poland, Hungary and the Czech Republic have very low and in a few cases even decreasing levels of part-time jobs.

*Figure 2: Temporary Employees (including part-timers) as Percent of Working Age population (15-64 years), 1998 and 2008*

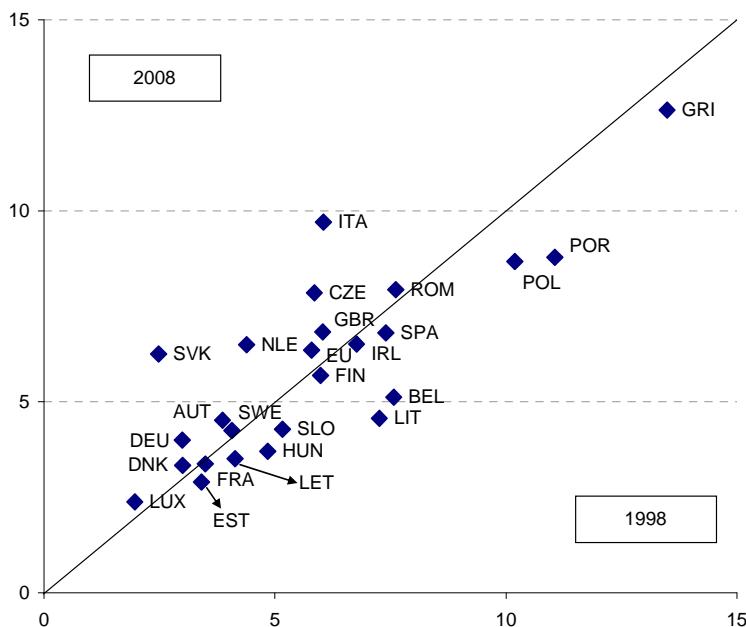


Source: Eurostat, own calculations

Level and dynamics of temporary employment (Figure 2) are much more diverse. Some EU-member states experienced a spectacular increase, for instance Poland. But temporary employment, including temporary part-timers and temp-agency workers, increased also in the Netherlands, Sweden and Portugal, whereas the level even declined in Denmark and Great Britain. Again, apart from Poland, most of the new member states have low and some even declining temporary forms of employment.

No clear trend can be seen in self-employment (Figure 3). One explanation is the opposite dynamic: Traditional forms of self-employment especially in agriculture still decline. In some countries however, self-employment is related to the expanding ‘creative economy’.

*Figure 3: Self-employed (full-time or part time own-account workers) as Percent of Working Age Population (15-64 years), 1998 and 2008*

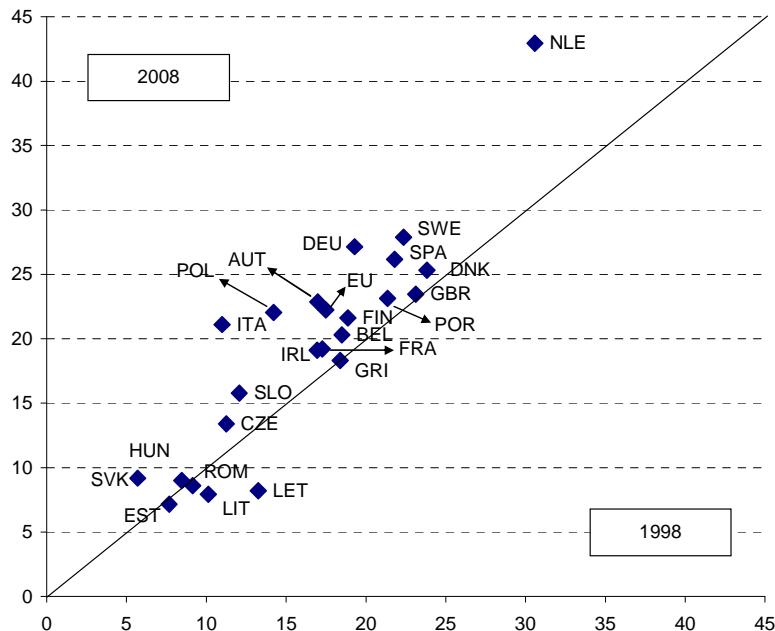


Source: Eurostat, own calculations

If we combine all three forms of non-standard employment to an aggregate non-standard employment rate (Figure 4), controlling for possible overlaps, we find again the Netherlands as champion: 43 percent of the Dutch working age population is employed in some form of nonstandard employment; the lowest level has the little Baltic state Estonia with only seven percent.

To sum up: With only a few exceptions, non-standard forms of employment clearly expanded in Europe within the last ten years, and I guess the same is true for Australia.

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



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

## 2. Causes and Consequences of Non-standard Employment

Of course, it would now be necessary to ponder about the causes and consequences of this development. In this essay, however, I will draw the attention only to the two main outcomes of well functioning labour markets.

First, to *social inclusion* through labour market participation: The decisive driver of increased labour force participation is part-time work, especially for women but to a lesser extent also for men, young and mature aged workers. Of course, there are penalties of part-time compared to full-time jobs: pay and job security is lower, the same holds true for training and job promotion. In Germany and in the Netherlands, for example, small part-time jobs ('mini-jobs') have been the strongest driver for the expanding low-wage sector. These disadvantages,

however, are partly compensated by higher job satisfaction, better work-life balance, better health and safety. That's why most part-time in Europe is voluntary. Transitions to full-time are lowest in countries with high level of part-time.

Temporary work correlates only weakly with labour force participation. In contrast to part-time work, temporary work is clearly demand driven and concentrated on sectors with high pressure on cost reduction. It also is strongly correlated with employment protection. Employers obviously substitute restrictions in hire and fire by escaping to fixed-term contracts.

Self-employment in Europe is – on the aggregate level – a negative driver of labour force participation. The explanation is simple. In many countries self-employment is still strongly related to the declining agricultural sector where still many women and mothers are helping out without being counted as employed. However, this aggregate correlation hides the modern type of self-employment, which is related to the creative sector: the artist labour market, free lancers in the media and in information technologies. In some countries, for example in the Netherlands, Italy and Germany, this type of self-employment is even driving labour force participation.

Modern self-employment is often combined with regular part-time wage work. Research reveals three motivations related to this combination. First enhancing utility, which means attaining psychological reward from self-employment that standard jobs may not provide; second motivation is to look after option security as a provision against unemployment, which means that those who get unemployed have already a foot in a new job; third reducing income uncertainty associated with self-employment by maintaining some income security from the regular part-time job.

Let me turn to the second main quality criteria of well functioning labour markets: *economic prosperity* through high productivity. Non-standard employment correlates with GDP per capita, albeit not strongly. This is not surprising if you are aware of the link between non-standard employment and increasing labour force participation of women. If women work, they substitute informally provided goods and services through marketed goods and services. Since women's higher labour force participation is strongly connected with higher education, a net prosperity gain through deepening labour division should be expected. This potential prosperity gain, however, might be hidden through discriminatory low wages.

Evidence related to productivity is mixed. At the macro level, increasing employment was not followed by increasing productivity in Europe. Rather the opposite is the case, with Sweden as the only exception. Only tiny evidence exists at the micro level. Rather positive effects are reported for part-time work. Firms in client-oriented services, for instance, can allocate part-timers according to opening hours and the flow of clients, and part-timers might work more intensively. However, firms that excessively use temporary work, especially in form of temp-agency work, are less productive. They obviously use this form of employment relationship as a low-cost strategy which is not sustainable. This confirms the theoretical expectation that genuine productivity based on innovation requires high internal functional flexibility through highly educated personnel, long tenures inducing workers with tacit knowledge to cooperate and to engage in continuous training efforts.

However, more research is needed, especially a closer look into the black box of firms using flexible labour. Yet, available evidence allows one cautious conclusion: As far as the negative relationship between non-standard employment and productivity holds true, one of the presumptions of the Danish flexicurity model will be undermined. Non-standard employment, in particular fixed-term contracts, might reduce the redistributive capacity to compensate the risks of high

external flexibility through high unemployment benefits and cost-intensive active labour market policy.

Even the Danish case itself seems to be challenged by a productivity crisis. Denmark substitutes non-standard employment to some extent through high job turnover eased though low job protection and generous unemployment benefits. That clearly makes Denmark the champion of mobility, confirmed in a recent excellent study comparing all four Nordic countries. Yet in terms of productivity and GDP growth, Denmark ranked consistently lower than its neighbour countries Norway and Sweden which have stronger employment protection and less job turnover.

So, let us come to some interim conclusion: The increasing variability of employment relations is connected with increasing labour force participation, especially of women. The outcome seems to be positive related to overall economic prosperity, but ambivalent or even negative related to the productivity dynamics. Sure, non-standard employment, *per se*, is neither more precarious nor more flexible than standard employment; nevertheless, on average, greater insecurities are implied. Most countries have not yet solved the risks of increasing labour market segmentation related to non-standard employment.

The question, therefore, arises: How can we govern the increasing variety of employment relations in a way that makes equity and efficiency complementary? One can imagine two ideal type solutions. First the hybridisation of the employment contract, known as temp-agency work. Employers buy specified labour services from these intermediaries just in time, and temp-agency workers provide these services just in time thereby ensuring numerical and/or functional flexibility; the temp-agencies pool all the related risks, ensuring thereby possibly all kinds of security: employment-, income-, social-, and option security. This is a charming model, indeed. It once stimulated the prominent Dutch industrial

relations expert Jelle Visser to the provocative statement: “*Temp-agencies are the trade unions of tomorrow.*”

I have a lot of sympathies with this view. I am persuaded that the potential of TAW is still underexploited, especially related to building bridges or stepping stones for long-term unemployed back into work and related to the increasing market for career services. Yet, TAW needs a sound regulatory framework, otherwise one runs into the situation shown in the following cartoon:



The worker, here, holds the dismissal notice ('*Kündigung*') in his hands, and the personnel chief, tapping on his shoulder, says: '*Who knows, perhaps we see us again in temp-agency form.*' The reader can find examples for this practice in Germany that would go beyond the space limits of this paper (Schmid 2010, 2011).

So, despite some promising perspectives, the limits of TAW for future employment relations are evident. Why, then, not dreaming of becoming a civil servant? Ideally, this employment contract ensures to workers all kinds of security just for the little favour of being ready to move with the employer, like in the former times when the kings were riding through their empires with the key administrators around them. The ideal-type civil servant provides numerical and functional flexibility through moving with the tasks as they came up. Apart from accumulating high skills and multiple skills through continuous education and learning, civil servants have to demonstrate absolute loyalty to the employer, and they have to be completely free from any other obligation, especially from unpaid household chore and care work. This is the reason why women, when they exceptionally were hired in a civil service position, had to leave this position as soon as they got married. In Germany, this female celibacy was still in practice in the 1950s.

Of course, today, the state as employer is emancipated and it serves to some extent even as a model employer, especially for women. Yet its limits for future employment relations are evident, too. So, the question arises: Are we lost between *two* utopian ‘flexicurity’ models?

### 3. *Some Brief Notes to the Theory of Employment Relationships*

What does theory tell? The following can only be a brief sketch to get a rough picture of the state of the art and further research needs.<sup>3</sup> Starting point is the interest of stylised labour market actors (employees and employers) in the (open-ended and full-time) standard employment contract. It goes without saying that a further exploration of this issue would have to differentiate the interests within these two groups of stylised actors.

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<sup>3</sup> More can be found in my book on *Full Employment in Europe* (Schmid 2008, 178-85), and in Schmid (2010), Schmid (2011) with further references to literature.

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

*Employers'* primary interest in a standard employment contract is *authority* in order to ensure flexible use of human resources for which they are ready to exchange some job and income security. They are also interested in *reliability* for the sake of security of high quality services for which they exchange some voice to workers. This interest will be higher the higher the costs for controlling shirking, which probably correlates with skills and specialisation. Finally, they are interested in postponing decisions as a kind of *liquidity preference* in exchange for some job security. Especially this latter ‘workforce liquidity’ as a tool for managing uncertainty seems to become even more important than in the early 1950’s when Herbert Simon thought about it. Workforce liquidity has two dimensions: First, postponing decisions with regard to working times to which I will present later an important example. Second, postponing decisions with regard to the tasks of functions the workers are supposed to fulfil.

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

First, *employees* might lose some interest in open-ended employment contracts by having other income resources than wages. Little systematic knowledge is

available, but anecdotic evidence says that substantial capital income or assets are available only for a minority. Some kinds of assets, such as real estate and houses, might even enhance the interest in long-term employment relationships. In return, a well functioning housing market might be a functional requisite for high external flexibility.

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

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

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

*Employers'* interest in open-ended and full-time contracts may decrease, first, by reduced opportunity costs to buy specialised knowledge induced through information technology; second by the erosion of internal labour markets,

complemented by increasing labour mobility through migration or an improvement of traffic infrastructure; and third by the fact that information technology decreases the half-life of firm-specific knowledge and depreciates tacit knowledge. In addition, increase in overall demand volatility (uncertainty) through the structural shift from (manufactured) mass production to services (especially around the clock social services) will decrease the interest in long-term relationships or at least increase the interest in a larger flexibility buffer of human resources. It remains, however, an empirical question how relevant these possibly changing circumstances are. Potential countervailing factors are diversified and customer oriented high quality production, ensurance of innovative human resource capacities, and increasing recruitment costs for highly specialised workers or increased firing costs due to regulation.

Nevertheless, as far as disinterests in the standard employment contract on either side of the contracting parties increases, three alternatives are available: First, turning to sales contracts, in other words to buy work or services from outside of the firm instead of relying on the making by their own staff; second, to enrich the standard employment contract with elements of sales contracts including negotiated elements of flexibility and security; and third, to enrich sales contracts with elements of employment contracts. The only exception, obviously, is the potential interest of employees into open-ended part-time work, which explains (as already hinted by discussing the figures on part-time work) the need of redefining the “standard” at least partly by including high volume voluntary part-time work.<sup>4</sup>

Let us turn to the first alternative, accepting the factors driving sales contracts, which means to buy instead to make. These factors could be the availability of cheaper professional services (e.g., through temp-agencies, world-wide sub-

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<sup>4</sup> In Germany, the Federal Statistical Office (*Statistisches Bundesamt*) has already taken over this stance. But even in this case one has to be aware that continuously working in such qualified part-time jobs requires high wages and/or additional household earners and income from other sources like capital or inherited assets.

contractors); the availability of professional freelancers or the reduction of transaction costs for contracting through specialised legal services.

Possibilities to enhance standard employment contracts through elements of sales contracts are performance incentives of various kinds, cafeteria payments-systems, for example exchanging money for working time accounts or vice versa, and life-course contracts allowing, for instance, to reduce working time with seniority.

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

To sum up: The brief sketch of theory on the employment relationship certainly needs more careful exploration, among others by including new insights of behavioural economics related to perceptions of risks and uncertainty. Plausible reasoning, so far however, tells that on the employees' side interest in income-, job- and option security is still high, but demands of voice- or exit options (at least in form of temporary leaves) are rising; moreover, various work-life balance issues (especially balancing family and market work) increase the interest in (preferably open-ended) part-time employment. On the employers' side, interest in authority, reliability, loyalty, and flexible internal labour capacities is still high, but uncertainty of returns in investment increases, volatility of demand goes up, information and communication technologies make specialised skills around the world more accessible, project and network oriented types of work raise the need

of human resource flexibility, and labour supply deficits might enhance the willingness to offer part-time work opportunities.

So, to paraphrase an old French saying: *The standard employment contract is dead: Long lives the ‘new’ standard employment contract!* What’s ‘new’? This leads me to the fourth question: How can we improve the governance of so-called ‘flexicurity’?

#### 4. *On the Governance of ‘Flexicurity’*

As a general strategy, TLM-theory suggests *extending the expectation horizon* of labour market participants through flexible contractual arrangements. This concept goes back to the political theory of Niklas Luhmann who assigns to the political system the function of ‘*binding decisions*’. The central element of binding decisions in policy terms is not to impose a specific behaviour on its citizens. The thrust of binding decisions is to set in motion a cognitive process, in other words learning through commonly agreed objectives and values, which still have to be specified and operationalised through communication and negotiation, in other words, through a constant process of trial and error.

TLM-theory recommends four elements of such a strategy: First, establishing a general labour force membership status through universal social rights and duties that include all kinds of employment and paid or unpaid work. The second goal is to induce a career orientation over the working-life through making transitions pay and insuring life course risks beyond the risk of unemployment. The consequence of such a perspective is to extend unemployment insurance to a system of employment insurance. The third strategic objective goal is to overcome inequalities and risk aversion through capacity building, social bridges (stepping stones) and active securities. Under such a perspective, generous short-term unemployment benefits should not be seen as ‘passive’ expenditure or consumption but as ‘active’ investments that enable workers to engage in

productive job search free of ‘Angst’. Fourth element is to transform danger into trust through establishing learning communities, negotiated flexibility and negotiated security.

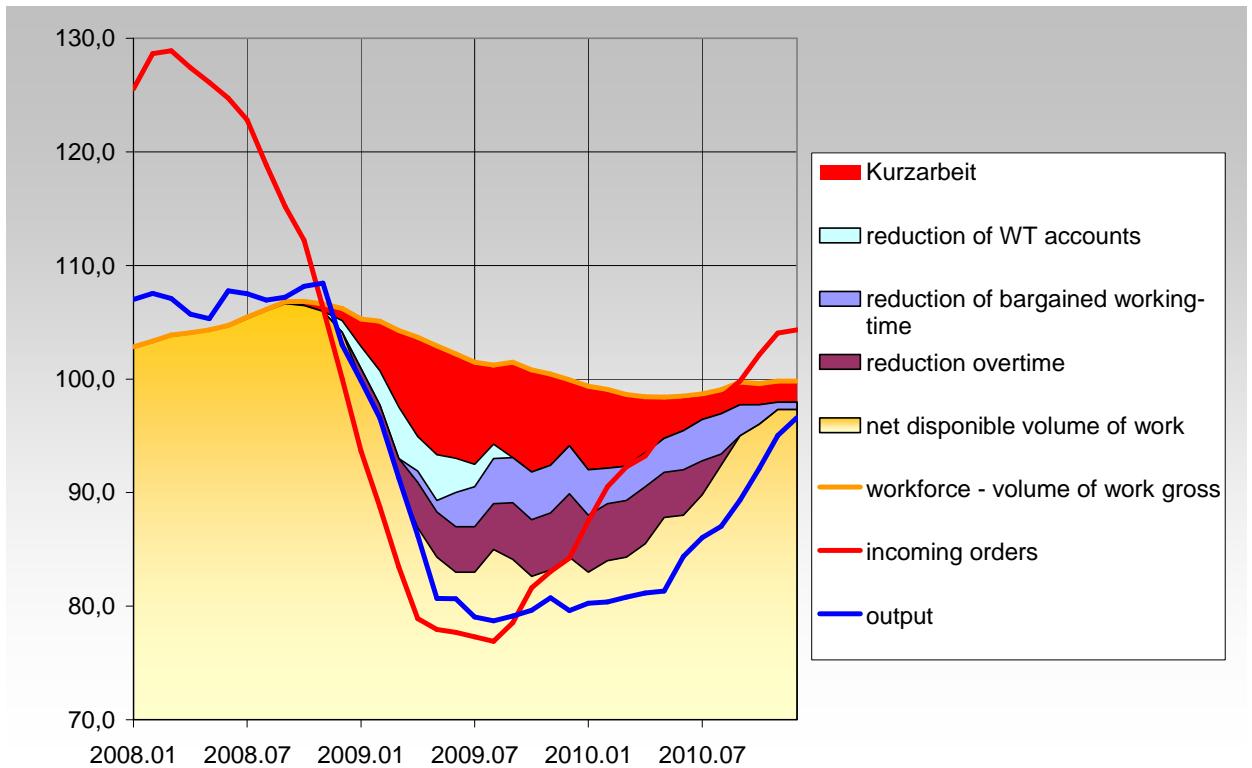
In the limited space of this essay I will concentrate on one labour market policy instrument which combines in an almost ideal-type way the four strategies just mentioned. It is the short-time working scheme, and I explain it as it has been established in Germany, but this instrument is spreading more and more all over Europe.

In Germany, short-time work (or ‘*Kurzarbeit*’) has a long tradition. It goes back more than 100 years. Today, there are three different types of short-time work allowance: the major role plays *cyclical short-time work* to maintain employment in cyclical troughs; *seasonal short-time work* helps especially construction workers to overcome income risks during bad weather and cold winters; *structural short-time work* helps companies in restructuring to prepare redundant workers finding a new job.

It is important to note that workers have a right to short-time work. Even works councils are entitled to apply for short-time work at the public employment service. The cut of income due to the reduced working time is compensated pro rata like unemployment benefits by 60 or 67 percent of the net wage, and these replacements are often topped up through collective agreements.

On average, 1.2 million workers went on short-time work in 2009, and reduced their working time by about one third. Yet, it was not only short-time work that prevented a drastic jump in unemployment. There were other instruments of internal flexibility used to adjust to the situation. Let me briefly demonstrate this by the example of the German mechanical engineering industry (Figure 5).

*Figure 5: Internal Flexibility in the German Mechanical Engineering*



Source: Jörg Hofmann, IG-Metall Baden-Württemberg

Incoming orders (the red line) fell by almost 50 percent and output (the blue line) by about 30 percent within less than one year. Both recovered within one year but remain at a slightly lower level. The workforce however, the dark yellow line, dropped only by about 3 percent. The bulk of adjustment was managed by working time flexibility.

However, short-time was only one element. Other ingredients of working time flexibility were the return to the regular 35 hours week (-1.4%), the reduction of overtime (-5.6%), the melting down of working time accounts (-5%), and the reduction of working time by utilising collectively bargained working-time corridors (-2.8%). Altogether, the volume of working time fell by 20.8 percent, and rose again to almost the pre-crisis level at the end of 2010 when only a few short-time workers were left.

In the whole German economy, this set of internal flexibility measures saved about 1.4 million jobs in the year 2009, which otherwise would have added 3.5 percentage points to the unemployment rate. This explains the fact that Germany was the only European country surviving the fiscal and economic crisis without substantial additional unemployment.

Yet, before we praise this as a ‘German job miracle’, we have to be careful in assessing this instrument from the TLM point of view. Clearly, there are advantages compared to dismissals.

First, short-time work allows a much quicker reaction to demand fluctuations than dismissals because dissolving employment contracts needs more time and implies higher transaction costs than just reducing working time by maintaining the employment contract.

Second, short-time work offers employers the opportunity of strategic waiting in face of uncertainty, which means ‘workforce liquidity’: Nobody knows at the beginning how big the drop in demand will be and how long this will take. Short-time work is a reversible instrument, dismissals are not.

The third enormous advantage for employers is task specific flexibility. Short-time work gives the opportunity to adjust work organisation precisely according to the specific tasks to be reduced or expanded. The government increased this flexibility by relaxing conditions which allowed especially small firms (for instance logistic enterprises and suppliers of large firms) to use the scheme to a larger extent than in former times.

The fourth advantage is the discretion for social insurance principals to fine tune the scheme as the situation develops. The government used this discretion by extending the time of using short-time work up to two years, giving the employers a comfortable planning horizon.

The fifth advantage is combining equity and efficiency through various combined elements: through broader sharing of costs and benefits compared to the alternative of dismissals. Workers affected by short-time work kept, on average, 80 to 90 percent of their wages. Such income and job security avoids ‘Angst’, which means panic reactions of workers, for example unreasonable saving which might reduce effective demand and lead to a vicious circle.

For employers, the remaining costs per short-time worker were between 24 and 46 percent depending on the size of government subsidies. These remaining fixed-costs are an effective incentive not to misuse the system. The flipside of these costs are potential savings for employers in the coming upswing. They keep their trained work force and will *not* have to pay for new recruitments which are estimated at about 32,000 Euro for high skilled craft workers or engineers. Last but not least, both workers and employers are maintaining cooperative networks, which mean human and social capital.

The federal employment agency, representing the solidaristic risk community of all workers, spent about 5 billion Euros for short-time allowances. Finally, the government complemented this risk sharing community through subsidising social security contributions and – last but not least – a large stimulus package in form of a so-called wreck-bonus which paid every person 2,500 Euro for exchanging her (at least 9 years) old car for a new one, costing the tax payer about another 5 billion Euros.

However, short-time work has also clear disadvantages compared to dismissals (external flexibility). State subsidies may shift the costs to tax payers or to marginal workers; job security may maintain non-competitive industrial structures and lead to jobless growth or new job creation only in non-standard form, especially temp-agency work.

Finally, at implementing short-time work, Germany failed in at least two respects from a TLM point of view: the incentives for training during short-time work were far too low; and a corresponding flexible training infrastructure is still missing. Yet, all in all, the balance is positive, not least due to an effective public employment service with established trust relations to employers.

Let me very briefly summarize. I started by asking four questions: First, why do we need a new standard employment contract? We need a new standard arrangement because the current standard employment contract excludes many new forms of employment relations and unpaid work shouldered especially by women.

Second, are there any alternatives to the '*old*' standards? Yes, but we should not search these alternatives among the extremes such as the hybrid employment contract of temp-agency work or the classical employment contract of civil servants. Needed are new securities for 'flexible' jobs, and new flexibilities for 'secure' jobs.

Third, what does theory suggest for 'new' standards? Theory suggests moving towards a universal status of labour market citizenship, to make social security independent from specific types of employment relationships, to build up adjustment capacities at the supply and demand side, and transportability of entitlements to foster job-to-job transitions.

Fourth, how can we improve the governance of so-called 'flexicurity'? Balancing flexibility and security requires, first, to endow labour market citizens with active securities beyond employment and, second, to extend their expectation horizon through an opportunity set of social bridges and learning communities.

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