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Research Report

Flexicurity and social dialogue in Romania - perspectives on the implemetation of flexicurity principles in Romanian undertakings

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Flexicurity and social dialogue in Romania – perspectives on the implementation of flexicurity principles in Romanian undertakings



STRATEGY AND POLICY STUDIES 2009 – no.3

EUROPEAN INSTITUTE OF ROMANIA
SPOS Project 2009 – Strategy and Policy Studies

Study no. 3

**FLEXICURITY AND SOCIAL DIALOGUE IN ROMANIA
– PERSPECTIVES ON THE IMPLEMENTATION OF
FLEXICURITY PRINCIPLES IN ROMANIAN
UNDERTAKINGS**

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Bucharest
December 2009

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Foreword

The research-development program destined for the Strategy and Policy Studies – SPOS, launched by the European Institute of Romania in 2006 in order to support Romania in exerting its attributions as EU member state, has continued in 2009 through a new series of studies.

The topics approached have answered different requirements, of great interest from the perspective of the evolution of the Romanian economy and society, representing the result of both a consultation process as well as of national and European programmatic documents, and institutional requests, as the representatives of the central administration present at the European affairs coordination meetings perceive them.

The studies provide founding elements for the main directions of action in order to bring to fulfilment some measures adopted at the European level (*Public finances: Introduction of a medium-term budgetary framework; The Future of the European Community's Resources and the Implications for Romania's Contribution to the EU Budget and The Impact of the Implementation of the Energy-climate Change Package on the Romanian Economy*), as well as perspectives of Romanian policies aiming to promote national reform measures in European context (*Flexicurity and social dialogue in Romania– Perspectives on the implementation of flexicurity principles in Romanian undertakings and Improving vocational competencies among graduates and youths: A chance for the future*).

The current series of studies has benefited from contributions of a research team made up of:

- PhD Catalin Ghinararu currently serves as the Scientific Secretary of the National Labour Research Institute of Romania, he is a senior res. 1st rank;
- PhD Florin Pavelescu is a senior res. 1st rank with the National Economy Research Institute of the Romanian Academy;
- Prof. PhD Raluca Dimitru is a professor with the law chair in the Academy of Economic Studies in Bucharest;

- PhD Georgeta Modiga is a university lecturer specializing in labour law with the DANUBIUS University in Galatzi

Throughout the elaboration of the above mentioned study, the research team has enjoyed the active contribution of Mr. Iulian Oneasca, as Project coordinator on behalf of the European Institute of Romania, as well as the support of a working group, consisting in representatives of the main central administration institutions with attributions in the field.

Gabriela Dragan

Director General of the European Institute of Romania

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SUMMARY OF THE STUDY

author: PhD Catalin Ghinararu

Definitely, no one can deny that we are living nowadays *during a* time of or better to say *in* a time of great changes. These changes began twenty years ago when the Communist regimes in Central and Eastern Europe collapsed. The world created after the 2nd World War whose long-lasting and ill-fated shadow marked our destiny collapsed as well.

During this time of changes, Romania and the other Eastern European countries changed its closed, totalitarian society and autarchic economy, based on volunteerism, with principles defined during the 1st World War, for a democratic society based on an open capitalist economy, maybe even more open than its degree of development would have allowed at that time. Normal is not the right word to use since those times had nothing to do with normality, if we can speak of normality in history, or in economy or in society!

This abnormality however had obvious benefits; most important was definitely Romania's accession to the European Union, a historical event that took place two years ago ; this study and this book would not have been written if this event had not taken place.

Fifty years after the creation of the European Communities by the Rome Treaty, Romania, a country whose name originates from Rome, Eternal City and origin of the entire European civilization, returned into the European family, which meanwhile had become very different from one that Romania had left at the end of the 2nd World War. It would be useful to meditate on this topic; our study, although it had a different topic, is also trying to analyse this issue.

Why this issue as well?

Because, in the middle of these decades that start with the collapse of Communism and end / or revive with the entering into force of Lisbon Treaty, these very days when this book is being written, Lisbon Strategy has been elaborated; Lisbon Strategy will remain in the European history as the programmatic document underlying the European views on development for this decade.

European Institute of Romania – Strategy and Policy Studies

Lisbon Strategy is of course the child of a time of extraordinary economic boom, of growth and development, EU expansion towards the former Communist Eastern region, technological boom, prosperity that expanded over the poorer European region including Romania; here, through its visionary approach, maybe to a greater extent than we may want to believe or admit, it managed, at least partially, to give solutions also for the deep economic crisis felt in Europe and in the world over the last two years.

A major aspect of this visionary approach of Lisbon Strategy regards the complex FLEXICURITY concept, which is the topic of this book.

We did not intend and we could not have intended to give a definition of flexicurity; we believe it is not possible to give only one definition; if one definition were possible, it would be summarized by Milton Friedman's sentence "*there are no free lunches*", which economically and socially means that we cannot have BENEFITS without COSTS; it is also hard to believe that a cost will not incur any trace of benefit.

This is how we began to approach this topic; however, we did not want this approach to repeat other European approaches on flexicurity but we intended an approach focused on Romania and on the Romanian flexicurity model, no matter how rudimentary structure it may have at the moment when this book is being written; we deeply believed that we have to create a Romanian economy and society in European context and to place flexicurity concept in their structure and to create a Romanian view on Europe.

We have analysed the well-known models starting from these assumptions. Our review included of course the famous Danish with its golden triangle of flexicurity, the Dutch experience, maybe less known but preceding somehow the Danish experience, which is now enjoying its celebrity. This analysis was deeply critical since it analysed development models and views on society that are very different from the Romanian ones, not necessarily because of Romania's historical condition after 1945-47. Although this analysis helped us review the theoretical concepts and their measurement systems, it was not and it cannot be useful as inspiration source.

Simply because FLEXICURITY is an "open source"! Since flexicurity has currently a well-defined European status reinforced by the European Commission Strategy for the next decade and simply called "EU

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2020”¹, each Member State is invited to look at the main topics that will be defined by the European Council in spring 2010 for the next decade and to define its own development objectives which shall take into account its status, its own needs and the way in which its development views can articulate around the EU overall view which is now better structured than the view adopted by all treaties before Lisbon Treaty.

Having also in mind the need for FLEXICURITY to be fully implemented in our country as well, a fact stipulated in the recent document of the Commission, we have analysed the fundamental economic and social concept of the Romanian institutional mechanism that resulted after two decades of transition from Plan to Market and after remarkable efforts to integrate Romania in the European area and in the Single Market. This detailed analysis does not show disappointing results as it may seem at first sight. On the contrary, it shows that a big progress has been achieved, important elements are already in place to implement flexicurity and the fact that this new concept, still seen by many as too innovative, is already present under various forms. There are still repercussions of the past; we are not able to remove them and under the current global economic crisis (let us not say “**depression**” as it may sound harsh; but it is the right word!) they will still reverberate for time some and slower down our efforts to overcome the crisis. It is time to cut our connection to the past and to innovate. What will come after the crisis crucially depends on innovation, including institutional innovation. The lost jobs cannot be taken back; if it happens, we shall not be able to generate new jobs and especially new jobs with content that is different from those lost during crisis, able to meet the requirements of the labour supply that will be different from the labour supply we have had for the last two decades.

We have written this *sui generis* summary of this book because we want not to summarize maybe but to sum up our thoughts on a concept that is integrated as a keystone of the European strategic view for the next decade for **change**. This is also a change of generations. A new generation grew up during these twenty years while another generation was born and is now looking for jobs. These generations are fundamentally different from the previous ones, including the generation of the authors of this book. Change makes the difference; not incremental, but RADICAL change! This change allows these new generations that will be part of the labour supply that will experience full flexicurity (“*at its full*”) to be better informed and

¹ See “Commission of the European Communities” – Consultation on the future “EU 2020” strategy (working document), Brussels, COM(2009) 647/3.

better educated than the previous ones. Consequently, the legitimate question – which we are trying to answer one way or another in the chapters on FLEXICURITY in macro- and micro-economy is: Will the labour demand meet the expectations of the labour supply? Will the labour demand provide those jobs that a labour supply better trained are looking for? Eventually, will be there equilibrium generated on the national level? Alternatively, it will be just transferred into the Unique Market while on our traditional national market we shall have to become used to PERPETUITY of DISEQUILIBRIUM?

This is the strong point of the FLEXICURITY concept, in our opinion, and especially the need to try to fully implement it.

What is our response? A simple one, although confusing, at least for the generations preceding and including the generation of the authors of this book: **Equilibrium of national labour markets is a concept of the past and we shall have to forget it**². Disequilibrium of the national labour markets, much too small in all Member States to play the global economic game will become the rule; hence the need to flexibilize, to do what currently is called LEVERAGE by the too much blamed financial markets, and a simultaneous effort, sometimes hard, to ensure social security, or HEDGING, as it is called by financial markets.

The full practical implementation of FLEXICURITY concept finds its place between the leverage of flexibilization and the hedging of security; we shall have to get used to what now may seem a disequilibrium state.

This disequilibrium, already visible, triggers the need of quick transitions of the labour market, brings a new course of our daily life, of our active life, no longer linear. This non-linear course of life will cause a back and forth movement of the individual, *from school to work and from work to....school*; it will not be comfortable. At micro level, it will mean disequilibrium. Disequilibrium of the individual will mean disequilibrium of companies as well. The way in which companies operate today will no longer be possible in the near future. This does not mean that companies will change their short-term, speculative and profit-dedicated thinking, for a long-term thinking dedicated to sustainable development, climate change prevention etc., as you may think, as a result of lessons learnt from the harsh crisis. No way! On the contrary, technological and financial innovation,

² This is not a mere academic speculation. It is based on the findings of an anticipation of demand and supply in Europe; the author of this book takes part in this project financed by CEDEFOP Centre whose findings will be made public at the beginning of 2010, most probably.

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carefully regulated, will become more dynamic and quick. There will be more and more short term business planning and companies will have to flexibilise their operations on a market whose equilibrium will no longer be local and predictable but continental, global, unpredictable.

Unpredictable equilibrium, here is something new. This **new thing** will be part of our daily life – this is what we mean when we analyse the current crisis and its implications upon the way we need to reshape the Romanian economy and labour market and what we have conceived so far as flexicurity. We had been used to a reversed correlation, until some time ago; it itself, it seemed a predictable equilibrium. When the market was strengthening its position, the state was withdrawing, and the other way round, when the state was strengthening its position, the market was withdrawing. This game used to be part of the economic cycle. It may no longer be like this. The current crisis proved that the market mechanisms must be strengthened and we should no be caught in the trap of protectionism ; on the other hand, we must strengthen the capability and the role of the state whose extraordinary strength must be put to work to support citizens and companies. Thus, the above-mentioned disequilibrium could become bearable. This is the *leverage and the hedging, flexibility and security*, at macro- level.

Will it be easy to adopt this model, will it be difficult to make this transition? The answer is again clear in our opinion: NO! It will be another attempt under the sign of uncertainty, which is normal. That is why we need dialogue and especially **SOCIAL DIALOGUE**. In itself, FLEXICURITY is nothing else than an extremely sophisticated form of dialogue between the actors of the labour market adjusted to a world of disequilibrium. Far from signifying the death of unions, disappearance of collective bargaining or anything else of the kind that may sound catastrophic but not for real, FLEXICURITY in itself sets the conditions for unions, collective bargaining, individual negotiations, or non-union representation to find their place, their niches, and to be able to take part in this permanent leverage and hedging game, that is flexibilisation and security. The support of the state is essential in this process; since the state is “*the lender of last resort*” in economy, to quote Walter Bagehot, in society, the state is also “*promoteur et surveillant*”, to quote Victor Place because FLEXICURITY is a concept that transcends the economic dimension.

Romania’s European integration has been a goal assumed by the entire Romanian nation; that is why we have fulfilled it. During the next decade, we shall have to define new goals for our national efforts. One of the goals is, or at least it should be, in our opinion, to create a labour market

which, although unable to ensure a conventional equilibrium, but still able to play the leverage and hedging game, should be part of the new European equilibrium of the Unique Market; Romania will therefore need a plan or at least a sketch for this goal. That is why, in the last section of the book, we suggested such a plan entitled AGENDA for the future - seen from the perspective of the near future but also a later future, more ambitious, of the next generations. This future will have to allow individuals and companies to exploit the opportunities of the Unique Market and of the globalised economic markets, which means a higher exposure. This higher exposure to the market risks will have to be counter-balanced; this will be the most difficult moment of the approach – to achieve security under circumstances of disequilibrium, non-linearity, perpetual transition, to provide the individual and the company, that is the demand and the supply, with security and protection so that the market could take them over and innovate further on. This is the three-fold role of the state: “*lender/borrower of last resort, PROMOTEUR et surveillant*” – to combine the above-mentioned quotations. Our suggested agenda gives a few solutions: on the one hand, the potential of individuals and companies is stimulated even under budgetary austerity, and the role of the state increases not as traditional alternative to the market but as a **partner of the market**.

The European view of the next decade places FLEXICURITY and the need to ensure implementation of flexicurity, in general, in all the mechanisms of society and economy and especially on the labour market, within a very generous topic – increased role of individuals in inclusive societies. Although it may look artificial, this convincingly proves, after one decade of talk about FLEXICURITY, that we deal with a concept that is not only economic but also related to society; to implement it, that is to allow it to ***follow its path towards implementation*** does not mean to push society, economy, the labour market, the company towards a “*schlacht des vernichtung*” but on the contrary, it looks like a way to do EMPOWERING. In other words, it is the European way by which each individual could find one’s place on the labour market, in economy and society, it is the gateway from one Europe in which each individual knew one’s place to another Europe in which each individual creates one’s own place!

The final question not only for the readers of these lines that we, the authors have written here, but for any person who may have deep knowledge of the Romanian contemporary realities is if Romania, with its still rudimentary economy, with its society still incoherent and marked by the 45 years of Communism, can aspire at least to translate in reality these

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concepts typical of more advanced economies and more sophisticated markets.

The answer to this latter question remains obscure or so we choose to leave it for now. However, we do believe that it is not by coincidence that we choose to query ourselves as such at the end of the very year when Romanians commemorate 150 years since modern Romania emerged on the map of Europe, through their own freely expressed will. That is why the answer to our query may emerge itself from a *memo* written by Victor Place, a European and good friend of the Romanians, the French consul in Iasi at the time of the Union of the Romanian Principalities under Prince Al. I .Cuza (actually the destined recipient of the *memo* itself): "*L'essentiel est de commencer, avec un but determinee... Le reste se developpe de lui même, et s'il arrive que des obstacles imprévus surgissent, il arrive aussi, par compensation, qu'on découvre encore plus de ressources sur lesquelles on ne comptait pas*"³.

On behalf of the four authors of this book, I wish you a very pleasant reading.

Bucharest, Dec. 4, 2009

³ This quotation is part of a Memorandum addressed by V. Place to Al.I Cuza, the Prince of the Romanian Principalities in November 1859, entitled "Idées Générales pour servir a la réorganisation des Principautés Unies de Moldavie et de la Valachie". This document belongs to the private collection of the author of this book.

Chapter 1. FLEXI(SE)CURITY- EMERGENCE AND EVOLUTION OF A FUNCTIONAL AND ORGANISATIONAL EUROPEAN CONCEPT OF LABOUR MARKET

author: PhD Fl. Pavelescu

1.1. Creation and development of the European concept of Flexi(se)curity

The alphasoup we now call flexicurity came out sometime during the final decade of the 20th century as most of what was then EC, now EU, was undergoing a rather prolonged and frustrating jobless growth period. Under these circumstances, unemployment was high. As a solution to the lack of balance between demand and supply on the labour market, the implementation of the concept of “active policies of labour market” was tried. Best results were obtained in Denmark where unemployment decreased from over 14% in mid 1990s to 3,3% in 2008. The measures taken to reform the Danish labour market between 1994-1996 were not only a successful implementation of the „active policy” concept in a field of activity but also a starting point towards theoretical definition and testing of „flexicurity”; this was recommended by the European Commission since 2000 to be implemented by all EU Member States in order to achieve the objectives of Lisbon Strategy and of the EU employment strategy.

From theoretical and pragmatic point of views, some problems arise while implementing “flexicurity” which imposes careful analysis of its basic components and of the possibilities to be transferred into various versions of the European social model. The creation of this concept should be correlated with mutations that took place during the last ten years of the 21st century in the economic international environment and with the broader enlargement and deeper harmonization of the EU.

Significant expansion market-based regulation of the economy in general, the opening of national economies to external inflows of factors of production, goods and services, and a large-scale implementation of IT technologies changed very much the international economic environment. Industrialization expanded towards new continents and caused increased competition between economies of various countries. Consequently, maintaining the number of jobs in countries with old industrial tradition in

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Europe and North America became dependent on the competitiveness of the products made and services provided by those countries.

Thus, the solution for a sustainable economic growth was to stimulate the demand and the competitiveness of companies. Short-term, competitive gains stem from the labour force's adaptability both to the specifics of the economic environment as well as to the level of taxation and/or social insurance contributions. We should not ignore the role played by innovations made in the production and labour process that can significantly trigger increased opportunities for the companies to develop and strengthen their positions on the market.

In this context, especially as result of the demand theory promoted at the end of the 1980s, the emphasis was on the need to define and promote labour force flexibility⁴. Initially, flexibility has been a way to reduce the impact of the labour force institutions upon inefficient allocation and upon the deviated remuneration of the factor of production against marginal productivity, which was the main pre-requisite to achieve a balance between demand and supply⁵.

At micro and macroeconomic levels, flexibility can be defined differently⁶, that is: a) external numerical flexibility, b) internal numerical flexibility, c) operational flexibility, d) Flexibility of salaries/wages, e) Spatial flexibility of the workplace⁷. More and more methods were used to

⁴ Interesting to note that in these years, the theoretical concept was that during the ascending stage of the macro-economic cycle, when the productive mechanism is re-built based on technologies, economical evolution depends on the „paradigm of the supply”, while during the descendant stage of the macro-cycle, economical evolution depends on the „paradigm of the demand”.

⁵ Unlike the (neo) classical theory, stating that if a factor of production is remunerated at the level of marginal productivity, the balance between demand and supply is ensured, the disequilibrium theory promotes the hypothesis according to which, given the existing institutions, the market system making up an economic and social model is a hierarchical one. Within the hierarchical system, the labour market has the main role. The salary is „a false price of the labour force, as it is a result of negotiations and force relations between employers and unions.

⁶ J. Atkinson, N.Meager- *Changing working patterns: How companies achieve flexibility to meet their needs*, Institute of Manpower Studies National Development Office, London, 1986

⁷ **External numerical flexibility** is the change in number of employees of a company as a result of the change in demand of products and services. This can be easier achieved if legislation is favourable to hiring employees with labour contracts for determined duration or part-time or quick procedures to hire and dismiss.

Internal numerical flexibility is the possibility to adjust the number of hours worked by the employees or their distribution during a day.

give a flexible nature to the job supply while reducing the contributions made by employees and employers to social insurance and protection system and reducing the size of businesses.

The steps taken to flexibilize the labour market had a positive impact upon private companies which increased their competitiveness and reduced salary-related costs; it had, however, some negative social consequences: a) diminished possibilities for authorities to intervene for social protection and health protection at workplace; b) re-shaping of industrial relations in favour of the employers and less favourable for the employees⁸, which reduced the feed-back between the main social partners as it can generate a sustainable economic growth and high level of social cohesion; c) increased labour intensity as a result of more new technologies that have negative consequences upon the health of the employees⁹; d) increased segmentation of the labour market since the promoting of atypical occupations blocks a part of the labour force in less stable workplaces that are less qualified and have less social protection, especially in less developed countries where the chances of active people to choose their occupational status are limited¹⁰.

Given the specifics of the European Union, the tendency to render the labour market flexible without taking into account the long-term

Operational flexibility is the possibility to rotate employees among various activities within the company.

Flexibility of salaries reflects the extent to which salaries or the salary-related costs can be correlated to the demand-supply relation on the market at a particular moment. Usually, remuneration systems based on performance and less unionization lead to higher flexibility of salaries.

Spatial flexibility of the workplace reflects the possibility of the employees to work not only at the location of the company but at other locations as well, with no impact on the tasks to fulfill. An example of this flexibility is tele-work or home work.

⁸ During the 1980s, while the sizes of businesses diminished, more atypical forms of employment were created and NGOs enhanced their activities, the unions lost some of their roles in ensuring a decent life for their members and families of their members. On the other hand, the employers' associations increased their influence in society as a result of enhanced communication means, cooperation networks and better analysis of the economic environment.

The reduced role of public authorities and unions over industrial relations was compensated by fiscal incentives given to companies that created new jobs on the labour market and improved the working conditions, promoted "voluntary codes of conduct" for managers or entrepreneurs in relation to their employees, or "social responsibility of corporations".

⁹ XXX-World Employment Report 2001. *Life at work in the information economy*, ILO, Geneva, 2001.

¹⁰ *Precarious employment in Europe. A comparative study of labour market related risks in flexible economies*, ESOPE Final Report. Directorate General Research, Brussels, 2004.

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consequences would have blocked the economic growth and would have expanded social exclusion. Negative consequences could have been generated in terms of labour demand and supply. Given the ongoing demographic ageing, a requirement to ensure a sustainable economic growth and social cohesion is to efficiently use the creative potential of the aged population. Thus, the European Union focused on new formulas to ensure equilibrium between increased competitiveness of companies and jobs that should respond, in terms of number and structure, to the specifics of the labour supply.

Stimulating the creation of new jobs was set as a condition for a successful European integration starting with the European Council in Essen in 1995 and Amsterdam Treaty in 1997. In 1998, the concept of good quality employment was first worded during the works of the European Commission when the European Employment Strategy was launched.

Flexicurity was among the methods recommended to ensure better use of human resources in EU Member States through the guidelines on the implementation of the European Employment Strategy for 2005-2008¹¹. The Flexicurity principle was established as one of the techniques to improve significantly the labour market and the competitiveness of companies as a result of the positive experience that showed an increased employment in Denmark, the Netherlands, Ireland and Austria¹², and the progress achieved in the conceptual and theoretical dimension. The broader application of flexicurity in the EU reflects an instance of the Open Coordination Method.

Basically, flexicurity defines an integrated strategy through which **a balance in ensured between the flexible operation of the labour market, the Security of employment and the management of transitions from one occupational status to another**¹³.

It is important to note that Security no longer means, like in previous approaches, Security of job/jobs, but Security of employment and/or of income needed to ensure at least a decent living standard. In other words, active persons must be ready to accept professional mobility within one or several businesses as well as flexible working hours and flexible contractual arrangements as a way to adapt to changes triggered by technological and socio-economic changes. A pro-mobility behaviour of the active persons

¹¹ European Commission - *Working together for Growth and Jobs; Integrated Guidelines for Growth and Jobs (2005-2008)*, Luxembourg, 2005.

¹² P. Auer - *Employment revival in Europe. Labour Market success in Austria, Denmark, Ireland and the Netherlands*, ILO, Geneva, 2000.

¹³ European Commission - *Towards Common Principles of Flexicurity: More and better jobs through flexibility and security*, Luxembourg, 2007.

does not imply that “classical” occupation forms will disappear entirely but there will be pre-requisites of a diversity of work relations through which both interests of the employees and of the employers will be fulfilled.

Flexicurity is not only a strategy to reduce disequilibrium on the labour market but a concept to analyse the conditions under which the respective market operates. This dimension of the “flexicurity” concept comes from the definition of the forms of security, and the definition of the forms of flexibility: a) **Job Security** (possibility of an employee to keep one’s job); b) **Employment Security** (possibility of an employee to have a job but not necessarily with the same company or employer); c) **Income Security** (possibility to preserve the income of a person after losing one’s job as a result of re-structuring, illness or accidents) d) **Combinatory Security** (possibility to reconcile one’s job with private life).

The clear definition of the forms of flexibility and security allows building of a flexicurity matrix¹⁴ by which we can analyse the correlations between, on the one hand, pre-requisites of labour competitiveness and productivity of companies, and on the other hand, possibilities of active participation and social inclusion of professional or social groups that at a certain moment are placed along the secondary component of the labour market or have an outsider status within companies.

The Flexicurity matrix reflects correlations between its two components only in a static way. It becomes useful when analyzing the possibilities to improve the labour market on short-term; to facilitate the ascending professional mobility; and to modernize the production system and the social model compatible with the educational level and the needs of the majority of the active population.

When approaching flexicurity, we need to take into account the specifics and the role of the internal and external components of flexicurity as well as the quantitative and qualitative aspects¹⁵. Among quantitative aspects of internal flexicurity within companies, the main role is played by flexibilization of working hours¹⁶, which is done by taking into account the

¹⁴ T. Withagen, F. Tros- “*The Concept of flexicurity*”: a new approach to regulating employment and labour markets in “*Flexicurity : Conceptual issues and political implementation in Europe*”, European Review of Labour and Research no.2/2004.

¹⁵ A. Gougswaard, P. Oeji, T.Brugman, T.de Jong - *Good Practices to Internal Flexibility Policies in Companies*, European Foundation for Improvement of Living and Working Conditions, Luxemburg, 2009.

¹⁶ Among working time flexibilization methods used by companies: a) possibility to adjust the beginning time and the ending time of the working day, b) possibility to accumulate a number of hours worked that later on will be compensated with days off or longer holidays;

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requirement to increase the competitiveness of the company, and reconciliation of one's job with private life. Consequently, these forms of flexibilization can meet the interests of both parties (employees and employers). Hence, the need to assess costs and benefits that internal flexibilization implies for each of the two social parties involved in the business. The matrix reflecting the working time arrangements of the companies can be used as a method to analyse the extent to which the flexibilization of the working time fulfils the interests of the company and of the employees¹⁷.

The qualitative component of internal flexibilization refers especially to innovations made in the work structure, taking into account the technological changes achieved by the company and the need to increase productivity. Implementation of these methods to organize work in compliance with new technologies implies more attention paid to: a) autonomy of employees during work processes, b) rotation of the positions, c) team work, d) pace of work, e) cognitive dimension of work, f) communication structures at workplace¹⁸. Qualitatively speaking, flexibilization implies several dimensions and both outsiders and insiders.

External flexibilization implies cross-company mobility of the labour force and finding ways to maintain and increase competitiveness of companies as capacity of as many as possible of the active population to do smooth transition in their careers or occupational status. The quantitative dimension is achieved through diversity of the occupational status and flexible labour contracts, like contracts with determined duration. Qualitative aspects of the external component of flexibility can be achieved through subcontracting and outsourcing.

Given the EU experience and the need for an integrated approach, it results that a high level of flexicurity is ensured by meeting the following requirements at the same time: **a) flexibilization of labour contracts and**

c) possibility to choose between several types of working hours within one company, d) possibility to choose some working hours between certain limits, e) possibility to define one's working hours (cf. XXX- *Employment in Europe*, 2007, European Commission Brussels, 2007).

¹⁷ H. Chung, M. Kerkofs, P. Ester – *Working time flexibility in European Companies, Establishment survey on working time 2004-2005*, European Foundation for Improvement of Living and Working Conditions, Luxemburg, 2009.

¹⁸ A. Parent-Thitton, E. Fernandez Macias, J.Hurley, G. Vermeylen, *Fourth European Working Conditions survey*, European Foundation for the Improvement of Living and Working Conditions, Luxemburg, 2007.

forms to organize work, b) designing and efficient implementation of active policies of the labour market, c) expansion and improvement of the life-long learning system, d) modernization of the social security system.

If the above-mentioned requirements are met, an improvement in the quality and mobility of labour force, especially labour force in the secondary labour force market, will take place. Thus, one idea becomes operational: the quality of the labour force depends not only on the educational level or on the wish of the aged persons to get employed in activities that are economically and socially useful, but also on the extent to which that human potential is protected in case of disequilibrium between the labour demand and supply.

By ensuring **flexible labour contracts**, the phenomenon of discouragement and withdrawal of the relatively low-qualified persons from the labour market is avoided. On the other hand, pre-requisites for a larger adaptability of highly trained professionals, usually employed on the primary labour market, to potential reductions of businesses in which they work are ensured.

Improvement of the contents and forms of life long training is based on the idea that prolongation of the duration and improvement of quality of professional training systems lead to long-term employment revival and to reduced gender differences in employment¹⁹. Thus, pre-requisites for a reduced segmentation of the labour market are ensured and creativity of the human capital can be stimulated. In addition, investments of the companies in human capital will be stimulated.

Active policies of the labour market can contribute to increased mobility of the labour force when significant mutations of production and social environment take place. In addition, through passive methods meant to reduce disequilibrium on the labour market, social protection costs decrease significantly.

Modernization of the social protection systems can activate the labour force supply by appropriate aid given to vulnerable groups, by avoiding the „poverty trap”, by applying the principle of solidarity among generations and the support to reconciliation between one’s job and private life. In addition, improvement of health protection system is needed, because the quality of the health protection system has an impact on the quality of the labour force supply. An active person in a good physical and

¹⁹ P. Auer, *Employment revival in Europe. Labour Market success in Austria, Denmark, Island and the Netherlands*, ILO, Geneva, 2000.

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psychological shape will have better chances to get hired by a company and to work with high productivity²⁰.

Implementation of flexicurity principles is facilitated not only by the above-mentioned requirements but also by action taken jointly by social partners and public authorities. The European Commission established a set of common principles in this respect²¹, to support the Member States to design their own guidelines to implement flexicurity without overlooking their national opportunities and challenges:

- a) strengthening of the European social model,
- b) ensuring of an equilibrium between rights and obligations of social partners in implementing flexicurity,
- c) adjustment of flexicurity principles to local features,
- d) reduced segmentation of labour force,
- e) need to promote internal flexibility and external flexibility, as well as support for ascending mobility of the labour force,
- f) promoting of equal opportunities and gender non-discrimination,
- g) defining of an appropriate framework for social dialogue and enhanced trust between social partners,
- h) equal distribution of costs and benefits of flexicurity so that to avoid impacts upon the public budget and to ensure efficient use of public and private resources available.

1.2. Flexi(se)curity in the context of mature European economies (the Kingdom of DENMARK and the Kingdom of the NETHERLANDS/Holland)

A – DENMARK

There are many factors that led to positive results in defining and implementing of the „flexicurity” principle in Denmark, among which reduction of employment level and maintaining of a stable employment level. It is an interaction between high level of competitiveness and economic progress and the social model adopted by Denmark tens of years ago.

²⁰ F.M.Pavelescu – *Transformation of economy and disequilibrium of the labour force market*, IRLI Publishing House, Bucharest, 2003.

²¹ European Commission- *Towards Common Principles of Flexicurity: More and better jobs through flexibility and security*, Luxembourg, 2007.

Denmark has a high level of economic and social development, reflected in the Human Development Index as tantamount to 0,952 (HDI)²², calculated against 2006 data, which places Denmark on the sixth place in the EU top²³. This is complemented by increased competitiveness materialized in surpluses of the trade balance (annex no 1). Increased competitiveness is ensured by implementation of new technological solutions both in traditional economic sectors like agriculture and in sectors like use of renewable energies, and also by allocating of more than 2,4% of the GDP for research, development and innovation.

The dynamic trend of the Danish economy is based on a friendly business environment allowing a quick setting-up of companies and a smooth carrying out of businesses, as a result of very few bureaucratic regulations in the financial sector and in the labour market. Protection of jobs is lower than in other European countries but there is an old tradition of decentralised negotiations between employees and employers regarding the number of employees within companies and the working conditions²⁴.

However, the relative liberalization of the business environment is counter-balanced by high taxes²⁵, which results into reduction of differences in incomes and significant financial resources allocated to universal and high quality public services. Thus, inequality of incomes and poverty risk after poverty transfers are significantly lower than the average level in the EU or in other developed European countries.²⁶

Pre-requisites are therefore ensured for a high-performance health system and implicitly for a high life expectancy (approx 78 years old), and also for high literacy that is 100% of the population. There is also a practice of replacing 90% of the average salary over the last 12 months with the

²² The Human development Index is calculated by comparing the GDP /inhabitant in various countries around the world, the life expectancy and a composite index reflecting the population attending various forms of education.

²³ XXX-Human development indices, UNDP, March, 2009.

²⁴ During „September compromise” (1899) there was established the principle of cooperation and negotiation between employers and unions regarding businesses. However, the last decision on how to organize work and to establish the number of employed people belongs to employers.

²⁵ Denmark is one of the countries with highest taxes in the EU which causes high income per inhabitant.

²⁶ According to Eurostat statistics mentioned by A. Lefevre and D.Meda in *Performances nordiques et flexicurite: quelles relations*, Revue International du Travail nr. 113/2008, in 2006, the index of inequality of incomes was 4,8 in the EU, 3,4 in Denmark, 4,0 in France and 3,5 in Sweden. The poverty risk after social transfers was 16% in the EU, 12% in Denmark, 13% in France and 9% in Sweden.

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unemployment benefit when a person loses one's job. The maximum duration of the unemployment benefit is 4 months and the person shall take part in professional training programmes²⁷.

The distribution of population per sectors of activity reveals that Denmark is exclusively a „service-based economy”. The primary sector (agriculture and forestry) involves about 3% of the employed people and the secondary sector (mining and quarrying industry, manufacturing industry, energy, gas, water) about 21%. Consequently, the service sector provides more than three quarters of the total number of jobs. Is it interesting to note that the health protection system employs more people than the manufacturing industry²⁸. In addition, more than a third of the employees works in the social infrastructure (education, health protection, public administration), budgeted from public funds.

The percentage of freelancers between 2004-2007 was between 6,2% and 6,4%, and of the employees under labour contracts with determined duration was between 8,9% and 9,8%, below the average in the EU²⁹. However, the percentage of employees with part-time jobs is higher than the average in the EU³⁰.

Thus, the labour force in Denmark has a low segmentation. It is a consequence of a differentiation in incomes but also of a highly functional protection and social inclusion system. The fundamental idea of the Danish protection and social inclusion system is that public authorities have the Constitutional obligation to ensure all citizens decent life standards and inclusion into the labour market. In exchange, when citizens become unemployed, they must look for a job and accept the opportunities offered.

Since the protection and social inclusion system has significant financial resources, because of high competitiveness and social productivity of labour and because of high fiscality, the material and financial resources needed to design and successfully implement active policies of the labour

²⁷ P.K.Masden - *Labour market flexibility and social protection in European welfare states. Contrasts and similarities*, in Australian Bulletin of Labour, June 2006.

²⁸ F.M.Pavelescu – *Reshaping of productive structure and evolution of employed population*, in the Collection “Biblioteca Economică”, series “Economic Issues no 270-271/2007, CIDE, Bucharest.

²⁹ Across the EU, the percentage of freelancers out of the total number of employed people was 16,4% in 2004, 16,3% in 2005, 16,2% in 2006 and 16,0% in 2007, the percentage of employees with labour contracts with determined duration was 13,3% in 2004, 14,0% in 2005, 14,4% in 2006 and 14,5% in 2007 (according to XXX-Employment in Europe 2008, Brussels, European Commission).

³⁰ Employees with part-time jobs represented, out of the total number of employees, 17,2% in 2004, 17,8% in 2005, 18,1% in 2006 and 18,2% in 2007.

market can be easily achieved. The allocation of more than 7% of the GDP for education and professional training that ensures high quality human capital is also facilitated.

This is how Denmark built the “golden triangle”³¹ of flexicurity based on: a) Flexibility of labour market where high job mobility of jobs and employees plays an important role, b) a generous and feasible social protection network, and c) an active policy of the labour market meant to preserve the interest of the people temporarily unemployed for professional training and to avoid the risk of “poverty trap”, that usually happen because of replacing salaries with unemployment benefits.

B – The NETHERLANDS

The first implementation of practices regarding „flexicurity” concept across the EU took place in the Netherlands. It is important to note that the economic and social development in the two countries is similar. Most recent estimations of the Human development Index is 0,952 for Denmark and 0,958 for the Netherlands³². Like in Denmark, in the Netherlands the trade balance is positive and it was between 7,4% and 8,6% of the GDP between 2004-2007 (annex no 2).

From the point of view of their labour structures per sectors of activity, both countries have „service-based economies”³³. The percentage of working-age population is high in Netherlands too, 78,5% in 2007. The percentage of freelancers and employees with determined labour contracts is higher than in Denmark and approximately similar with the average percentage in the EU.

The percentage of employees with part-time jobs is extremely high in the Netherlands, over 45%, which places the Netherlands on the first place in the top of this indicator, usually used to define the flexibility of the labour market. The high percentage of employees with part-time jobs results from the impact of factors related to the labour supply and labour demand. In the tertiary sector, there are jobs mainly for women because the working time is shorter than the standard working time; this ensures the pre-

³¹ V. Ciucă, D. Pașnicu, L. Son, C. Șipoș, M. Iordan – *The Romanian flexisecurity - A response to European labour market needs*, Romanian Journal of Forecasting no.2/2009.

³² XXX-Human development indices, United Nations Development Programme, 2008

³³ Unlike Denmark, the Netherlands had in 2006 a stronger tendency towards a „service-based economy”. The primary sector had 3,2%, the secondary sector had 17,3%, and the tertiary sector had 79,2%.

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requisites of reconciliation between active life and private life as well as a high percentage of working-age population.

On the other hand, significant expansion of part-time jobs when social productivity is high is a proof that businesses in that country are able to anticipate correctly some of the specifics of the labour force supply and to design successful organisational solutions.

The economic environment in the Netherlands is friendly for business people as the social partners have an increased role in shaping the trends of the labour market. At the end of 1995, in order to reduce unemployment and partially taking into account the first experiences in the field, the Ministry of Social Affairs and Employment concluded a Memorandum called „Flexibility and Security”. The document provided a set of measures to amend the protection of employment stipulated in the standard labour contracts concluded with the temporary employment agencies or in the collective bargaining labour contracts.

The reform measures put forward aimed at achieving a balance between the need to render the labour market flexible and the need to ensure social security³⁴. Later on, after consultations between social partners (entrepreneurs’ confederations, unions) in 1997, a law on Flexibility and Security was adopted; it entered into force on 1 January 1999. The active institutional implication of social partners in the flexibilization of the labour market was the first major innovation in the implementation of what later on would be defined as the “flexicurity” concept³⁵. A factor that ensured successful implementation of the concept in the Netherlands was the derogation from legal provisions imposing that staff could be hired through agreements concluded between social partners within the economic sector or business. The pre-requisites of a “negotiated flexibilization” regarding the use of the labour force and of a complementary arrangement standing

³⁴ T. Wilthagen, M: Houwerzij – *How does flexibility affect social cohesion? The council of Europe’s tree model revisited in Council of Europe, Reconciling labour flexibility with social cohesion – Facing the challenge*, Trends in social cohesion no.15/ 2005, Strasbourg, Council of Europe.

³⁵ An important role in achieving consensus between social partners about the implementation of flexicurity had the Labour Foundation, an institution with consultative role in the country, created at the end of the 2nd W W; its members come exclusively from entrepreneurs’ associations and unions. In time, this foundation became one of the main components of the consensual economy in the Netherlands. Its successful activity was based on its capacity to design and propose negotiation strategies with mutual positive effects for the social partners involved in the labour market.

somewhere between collective bargaining and the attributions of the Business Committees were ensured³⁶.

One of the flexibilization measures on the labour market was to give more rights regarding social protection of temporary employees. Temporary employees have some collective conventions that ensure them decent remuneration, professional training and complementary pension. The goal of the legislative measures taken was to diminish the segmentation of the labour market in a country where the primary sector (employing the population with the highest professional training) has a low Flexibility, and the secondary sector (with low-qualified jobs) was unsecured³⁷

The Dutch experience in reforming the labour market was an important stage in the theoretical elaboration and practical implementation of the flexicurity concept. It was proved that certain principles related to the flexibilization of the labour market could be translated quickly enough from one country to another if their economies were highly developed and there were similarities between social models, since both countries belong to the Nordic version of the European social model.

For a successful reform of the labour market, the pre-requisite was a deep and diligent analysis of the experience accumulated during the theoretical defining and practical implementation of the „flexicurity” concept. A research institute specialized in the analysis of flexicurity was set up within the University in Tillburg (The Research Institute for Flexicurity, Labour Market Dynamics and Social Cohesion at Tilburg University-Reflect). Hence, the importance given to the flexibilization of the labour market and to the safety of employed people in order to achieve the goals of Lisbon Strategy.

1.3. Statistical concepts and dimensions of Flexi(se)curity

Implementation of common principles of flexicurity in the EU and the recommendation that flexicurity should be increasingly used in the reform of the labour market imposed the need to define new indicators to reflect the status of the Member States. Thus, both longitudinal (in terms of time) and transversal (between countries) comparisons can be made to show

³⁶ M. Ozaki - *Negotiating flexibility. The role of the social partners and the state*, ILO, Geneva, 1999.

³⁷ T.Bregaard, F.Larsen - *Comparing flexibility in Denmark and Japan*, Centre for Labour Market Research at Aalborg University (CARMA), Denmark, 2007, cited after A. Obabic-*The Danish flexicurity labour market policy concept* , Working paper series, Paper no. 09-04, FEB Zagreb.

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the progress made in implementing the flexicurity principles and the efficiency of the economic policy measures taken to reduce disequilibrium on the labour market.

While selecting the indicators, one should see very well if they must reflect only the resources allocated to implement flexicurity, the status of implementation, and the results achieved or any other aspect of the economic environment and of the operational status of the labour market. One view is that those indicators should focus only on the effects caused exclusively by flexicurity. The argument is that by introducing other indicators that reflect not only the effects of flexicurity but also other measures, we may affect the accurate analysis of the respective method meant to reform the labour market³⁸. The selected indicators should also comply with the following requirements: a) to reflect closely the employment guidelines; b) to be clear and accurate; c) to be estimated from harmonized statistical sources of the EU (if possible), d) to be able to identify the issues related to the fulfilment of objectives and referential values adopted through the open method of coordination) to comply with the structural indicators; f) to have good quality.

Another view is that, in order to evaluate the progress made in the implementation of flexicurity principles, we need to take into account not only the indicators reflecting exclusively the impact that flexicurity has upon the operation of the labour market but also indicators reflecting the relation between labour demand and labour supply³⁹. We agree with this point of view since the implementation of the flexicurity principles takes place within economies with various competitiveness and labour productivity degrees. There should be also taken into account other synthetic indicators of the labour market.

Under these circumstances, the set of indicators to perform analysis and monitoring of implementation of flexicurity principles would consist of three components.

³⁸ European Commission, *Monitoring and analysis of Flexibility policies, Progress Report*, The Employment Committee, Brussels, 2008.

³⁹ T.Wilthagen-Flexisecurity: From principles to progress, European Commission, Thematic Review Seminar of Mutual Learning Programme of European Employment Strategy „, The development of national flexicurity policies in response to labour market challenges”, Brussels, 24-th September 2008.

A. Indicators of economic dynamics, competitiveness and macroeconomic equilibrium.

- A1. GDP growth rate;
- A2. balance of exports and imports (current account);
- A3. balance of the public consolidated budget;
- A4. labour productivity growth rate (apparent and hourly);
- A5. real average salary growth.

B. Synthetic indicators of the labour market

- B1. structure per sectors of the employed population;
- B2. activity rate of the working age population;
- B3. percentage of freelancers out of the total employed population;
- B4. percentage of part-time jobs out of the total employed population;
- B5. unemployment rate (per total of active population, gender and age);
- B6. long-term unemployment rate (per total of active population, gender and age).

C. Indicators of implementation of flexicurity principles.

This set of indicators was proposed by the Employment Committee of the European Commission and regards exclusively the monitoring of the expansion of flexicurity in the EU Member States. The purpose of these indicators is to measure comprehensively this complex phenomenon. For this purpose, three sets of indicators have been defined: **a) input indicators**, **b) process indicators**, **c) output indicators**.

Input Indicators are quantitative evaluations of the rules according to which the flexicurity implementation strategies are designed and financial resources are allocated to achieve the goals.

Process Indicators usually expressed as “percentage shares”, they indicate participation by various groups in reform-oriented labour market programs/initiatives; they also show the extent to which the flexicurity principles are implemented.

Output Indicators show the impact that the flexicurity principles have upon professional mobility or occupational status of active persons.

The three types of indicators are not inter-related especially at the beginning of the implementation of flexicurity. However, the more the reforming of the labour market will follow the trend above-mentioned, the

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more it is estimated ⁴⁰ that modifications of the process indicators will trigger changes of the output indicators.

It is important to take into account that, at least for the moment, we cannot create a composite indicator of flexicurity because of its multiple-faced nature and the absence of a strong correlation between the three types of indicators.

Because there are many aspects that define flexicurity, there are many indicators, unequally distributed among the four components and three categories of indicators. Thus, the monitoring of the progress made and the comparison between Member States become difficult. To overcome this obstacle, the Employment Committee of the European Commission found the solution to select 12 relevant indicators for each of the four aspects of flexicurity and of the three categories of indicators. We can therefore get a graphical representation of flexicurity under the form of a radar chart for each of the three categories of indicators⁴¹.

The 12 indicators relevant to evaluate the status of flexicurity are:

I. Input Indicators

a. percentage of employees with flexible working time out of the total employed population, in compliance with component “**Flexible contractual working relations**”;

b. percentage, out of the GDP, of public expenditure with development of human resources, in compliance with component “**Improvement of contents and forms of lifelong education**”;

c. costs incurred with active policies on the labour market per person seeking for a job, in compliance with component “**Active policies of the labour market**”;

d. costs incurred with unemployment benefits per person seeking for a job, in compliance with component “**Modernization of social protection systems**”.

II. Process Indicators

a. percentage out of the total employed population, of employees with labour contracts with non-determined duration, and of employees that voluntarily work part-time or under contracts with determined duration, in compliance with component “**Flexible contractual working relations**”;

⁴⁰ European Commission, *Monitoring and analysis of Flexibility policies*, Progress Report, The Employment Committee, Brussels, 2008.

⁴¹ European Commission - Monitoring and analysis of Flexibility policies, Progress Report, Report endorsed by EMCO, Brussels, 24-th June 2009.

b. percentage, out of the total employees, of employees that take part in lifelong learning, in compliance with component “**Improvement of contents and forms of lifelong education**”;

c. percentage, out of the total people seeking for jobs, of people taking part in active policies on the labour market, in compliance with component “**Active policies of the labour market**”;

d. percentage, out of the total people seeking for jobs, of people with unemployment benefits, in compliance with component “**Modernization of social protection systems**”.

III. Output Indicators

a. percentage, out of the working age population, of people with secured employment at least as secured as during the previous year, in compliance with component “**Flexible contractual working relations**”;

b. percentage, out of the working age population, of people with qualification, occupational status and remuneration at least at the same level as during the previous year, in compliance with component “**Improvement of contents and forms of lifelong education**”;

c. percentage, out of the total people who took part in the active policies of the labour market, of people who found a job six months after they completed the normal activation procedures, in compliance with component “**Active policies of labour market**”;

d. percentage, out of the total unemployed people, of jobless people who are not at risk of poverty, in compliance with component “**Modernization of social protection systems**”.

Chapter 2. FROM MACRO FLEXI(SE)CURITY TO MICRO FLEXI(SE)CURITY

author: PhD Fl. Pavelescu

2.1. Internal Flexibility in Romanian enterprises

Internal Flexibilization of the use of labour force plays an important role in successful implementation of flexicurity principles. In companies, Flexibility of the use of labour force has a multidimensional nature, as it depends upon the methods to organize work, organisational culture, characteristics of the labour force, level of technology in the company, relations between unions and managers, size of the company.

Internal Flexibility of the use of labour force in Romania in the European context

In order to evaluate internal flexibility of the use of labour force in Romania, we shall use a set of indicators from the fourth opinion poll regarding labour conditions conducted between 2004-2005 by the European Foundation for Improvement of Life and Labour Conditions⁴². These data also allows comparison with the trends in the European Union (UE-27) or in states that had been members before 1st May 2004 (UE-15), and states that joined the European Union on 1st May 2004 (NMS-10).

The main indicators to measure internal flexibility of the use of labour force are: **a) Workplace and organisation of work, b) Contents of the work and professional education, c) Information and communication at workplace, d) Arrangements regarding the working time.**

The comparisons regarding the workplace and the organisation of work reveal a sensible gap between Romania and other Member States of the EU, both from EU-15, and NMS-10 in areas like implementation of IT (tele-work, computer-based work). The percentage of tele-work in Romania is 2% of the total number of employees, compared to 8,3% in the EU-27, 8,4% in the EU-15 and 10,7% in NMS-10 (annex no 2.1). The low

⁴² Given its high complexity, the Opinion Poll on working conditions in Member States is conducted by the European Foundation for Improvement of Life and Labour Conditions every five years. The last poll was conducted between 2004-2005, and the next one will be conducted between 2009-2010.

value of this indicator for Romania reflects insufficient use of IT and also a lack of coherent regulations on the rights and obligations of the parties involved in this form of flexibilization of use of labour force.

The low percentage of people who used computers at their workplaces⁴³ in Romania, compared to the old or new Member States at the time when the poll was conducted was the consequence of the low degree of implementation of IT in economic and social activities.

In Romania, the labour force appears as less flexible to exposure to fluctuations of the demand of goods and services or to the request of the clients, compared to the EU-27, and to the EU-15 and the NMS-10.

The indicators measuring **Flexibility of the labour force in relation to the organisational variables imposed within the company** (dependent relation between rate of work and performance objectives, dependent relation between rate of work and the requirements of the direct boss, rotation of positions, team work) have, in Romania, higher values than in EU-27, EU-15 and NMS-10, except for the indicator „dependent relation between the rate of work and the requirements of the direct boss” for NMS-10.

The indicators reflecting at the same time the **contents of the work and the Flexibility of the use of the Labour force** reveals that in Romania more than half of the employees have to perform unexpected tasks at their workplace, to perform complex tasks and to learn new things from the professional point of view. At first sight, this percentage in itself indicates a high degree of Flexibility of the labour force. However, compared to the EU-27, EU-15 and NMS-10, the staffs employed in Romanian companies seems less flexible. The only indicator connected to the contents of work where the Romanian employees appear to be more flexible compared to the average in the European Union and the old Member States is the one reflecting the percentage of employees, which have the ability to implement their own ideas in their work.

Regarding the **equilibrium between professional education and qualification requirements for the workplace**, the Romanian companies appeared as having an advantage because the percentage of those who thought they needed additional professional training was lower than the average in the EU-27, EU-15 and NMS-10. At the same time, the percentage of those who believed that could take over new tasks was over 45%, that is 9% higher than in the EU-27 and UE-15 and over 14% higher than the one in NMS-10.

⁴³ Percentage, out of total number of employees, of people who used computers at their workplace was 14,9% in Romania, 45,5% in EU-27, 49,8% in EU-15, and 32,9% in NMS-10.

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It is also important to note that the percentage of those who attended paid training courses during the last 12 months is very low (11%), which means about 40% of the value of this indicator in EU-15.

Regarding **information and communication at workplace**, in Romania, the percentage of employees who are consulted about changes foreseen in the organisation of work and the percentage of employees informed about health risks and problems that may arise at workplace is lower than in EU-27, EU-15 and NMS-10. In Romania, the values of these two indicators are sensibly different. The percentage of people consulted about the changes in the organisation of work is about 40%, while the percentage of people informed about health risks and problems at workplace is 78%.

The arrangements regarding the working time reveal, first of all, the big number of hours worked, on the average, in Romania. In EU-27, the average number of hours worked per week was 38,6, in EU-15 it was 37,4, and in NMS-10 it was 42,8; in Romania, an employer worked, on the average, 46,4 hours per week. The big number of hours was due not only to the prolongation of the working hours but also to the prolongation of the work at weekends which actually should be days off. This is revealed by the low percentage of people who work 5 days per week (44,2%) in Romania, compared with the percentage in EU-27 (65,1%), EU-15 (66,5%) and NMS-10 (63,6%).

The working hours in Romania can be appreciated as more flexible than in EU-27, EU-15 and NMS-10. We reach this conclusion if we take into account the low percentage of employees who have less flexible working hours or they have working hours whose beginning and end had been previously set. The same idea is reflected by the percentage of employees who have to accept changes of the working programme was 21%, higher than the average in EU-27 and EU-15, but lower than in NMS-10.

To conclude, we can say that in Romania, the Flexibility of the labour force is a fact especially regarding the duration of the working hours per day. Because of the low salaries, the employees accept prolongation of the working hours per day. Also, within companies, we can see that the managers can impose, more than in the EU, a higher flexibility of the labour force, especially regarding the intensity of work (by modifying the pace of work) or the role played by employees in the productive process, by rotation of positions or team-work.

The Flexibility of the labour force appears lower when comparing to the EU if we take into account qualitative aspects like “tele” or “home work”, interaction with clients or performing of unexpected tasks. The

dialogue between employees and managers regarding changes in the organisation of work foreseen for the near future and their consequences on the health of the employees is not enough intense. Thus, some potential support from the employees for the flexibilization and adaptation to the requirements of the external economic environment involving a certain degree of turbulence is lost.

Dimensional mobility of enterprises and Internal Flexibility of labour force

The characteristics of flexibility of the aggregated labour force in Romania were influenced by other factors and by the size of companies. In 2004, in non-agricultural sectors, micro-companies (0-9 employees) and small companies (10-49 employees) had together 38,1% of the total employees, the medium companies had 24,7%, and big companies (over 250 employees) had 37% (annex no 2. 2). The fact that companies with less than 49 employees had over 38% of the total employees in non-agricultural sectors influenced the type of flexibilization of the labour force. Thus, in small companies, the degree of unionization was low and the influence of the general manager or of the owner was huge in the organisation of work and in establishing of performance objectives to achieve.

Under these circumstances, Flexibility of labour force was obvious especially in the increased number of hours worked, in the rotation of the positions and in teamwork. The effort of the employees to adapt to requirements imposed by the economic environment meant personal efforts to acquire new competences and skills and less participation in trainings to increase professional education. The low degree of communication and information regarding changes in the organisation of work or other aspects of the work foreseen by managers or owners are a direct consequence of a low degree of unionization.

The high percentage of micro-companies and small companies resulted from a process of intense restructuring in the context of a jobless economic growth between 1999-2004. The number of employees in non-agricultural sectors decreased with 5,9% (annex no 2.3). The job cut took place in big companies (with 30,8%) and micro-companies (with 12,8%). Small and medium companies supported the expansion of the demand for labour due to simultaneous action of several factors, among which: a) the strengthening of the position of certain small companies on the market; they could hire more employees and thus go beyond their status as small companies; b) Active entrepreneurial spirit in new areas of activity where the requirements of increased return imposed setting up of medium

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companies; c) Reduction of staff in big companies turning into medium companies, as result of restructuring.

After 2004, economic growth took place at the same time with the job growth. Between 2004 – 2007, the number of employees in non-agricultural sectors increase with 7,9% (annex no 2.4.); the dynamics were different, depending on the size of the company. The demand of labour force in big companies was decreasing. In medium companies, the number of jobs increased with 6,5%. The demand of labour force in non-agricultural sectors increased best in micro-companies and small companies where the number of employees increased with 28%.

The new jobs were created in constructions and services; jobs were cut in industrial sectors. In terms of size of the companies, the number employees increased in companies with less than 50 employees. The number of employees was significantly cut in big companies in industrial sectors, constructions, transport and communications, as well as in real estate medium companies and in medium service-providing companies.

Consequently, in 2007, in terms of employees, the big companies in non-agricultural sectors had 30% of the total number of employees, medium companies had 24,4%, micro-companies and small companies had 45,6% (annex no 2.5). In industrial sectors, more than 50% of the employees work in big and medium companies, in constructions, more than 50% in small and medium companies, and services, more than 50% work in micro-companies and small companies.

Given the above-mentioned, we can conclude that during the economic growth in 2000, the role of micro-companies and small companies was increased in generating jobs. The conditions were thus created for a flexibilization of the labour force model, especially in favour of entrepreneurs. Consequently, in principle, the issues revealed by the fourth poll conducted by the European Foundation on the working conditions for improvement of life and working conditions stay the same. To note a positive evolution – an increased percentage of employees which work with computers and/ or use the Internet of foreign languages.

However, the less intense economic activity starting from the last quarter of 2008 resulted into a wave of layoffs in industry and constructions. The reduction of quantitative demand of labour force was accompanied by new pressure for increased flexibilization of the employment model in the sense of adaptation of the companies to an economic environment with high turbulence. Under these circumstances, job security, appropriate remuneration or equilibrium between professional life and private life tend to become secondary.

To see the flexibilization of labour force rather as a privilege in favour of employers and to neglect job Security and the dialogue between managers and representatives of employees regarding all changes needed in the organisation of work and to increase the qualification level can be useful only on a short term. On a long term, in the context of resumed economic growth on a new basis, enforcement of all principles of flexicurity in a company can only be a factor to reconcile the requirements to ensure return and technological dynamics with requirements to improve working conditions and equilibrium between professional life and private life.

Action plan to promote the principles of flexicurity in micro-economy

In order to ensure implementation of the flexicurity principle, communication between managers / owners and representatives of employees shall be ensured. In this respect **an appropriate framework of dialogue between social partners, at micro or enterprise level, could be represented by the Enterprise Committees**. Discussing, in this institutional framework, of the complex aspects of implementing new forms of organisation of work would facilitate finding of flexibilization solutions for the labour force and for better use of its competences and skills.

The need to find solutions negotiated between social partners at microeconomic level comes from the fact that internal flexibilization of labour force depends both on arrangements regarding the working hours and by implementation of new more flexible forms of organisation of work, able to add value to the opportunities given by the new technologies. Consequently, apart from the Taylorist organisation of work, which shrinks but does not disappear⁴⁴, new forms of organisation of products expand, like: a) the discretionary learning organization b) production line in flux, c) ordinary organisation.

The new forms of organisation of work do not automatically lead to positive results. As they are conceived mainly to optimize the production processes, to improve quality of products and to enhance adaptation to the clients' needs, the new forms of organisation of work lead to intensification of work and implicitly, to increased nervous tension of the employees. Hence, health problems may arise.

⁴⁴ E.Lorenz, A. Valeyre - *Organizational innovation, human resource management and labour market structure: a comparison of EU-15*, in *Journal of Industrial Relations* no. 47(4)/2005.

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Another problem in the context of implementation of new forms of organisation of work arises from the reduction of rigidity of the management structure and from expansion of rotation of positions, from multi-use tools and equipment and from teamwork. These practices can increase productivity of work only if the pre-requisites of involvement of as many employees as possible in taking decisions about the pace of work and improved communication channels are created⁴⁵. It is also important to ensure pre-requisites for employees to get familiarized as much as possible with the contents of the new methods of organisation of work. Thus, an active learning process and identification of new potential to increase efficiency of the company of process can be generated, which had not been conceived during the stage of designing and reorganisation of the production processes and work.

In order to have a successful implementation of new methods to organize work, new stimuli are needed to enhance satisfaction of work through appropriate materials and moral incentives. It is also important to ensure a better control of the employees over their own work and to enrich the contents of their work.

The dialogue between managers / owners and employees regarding the improved organisation of work should not be restricted to implementation of new forms of organisation of work but have as objective as well the long-time evaluation of the impact that innovation in the organisation of work have upon various components of the labour force of the company. We can thus reduce and even avoid tensions between *insiders* and outsiders.

An improvement of the activity of the Human resources department of companies is also needed in the sense of enhanced accuracy in evaluating the performances of various categories of employees, improvement of recruitment methods and estimation of the needs to improve qualification through continuous professional trainings or other life-long learning forms.

2.2. Life-Long Learning (LLL)

The measures taken by companies to implement new forms of organisation of work and increasing of internal flexibility can be much more efficient if they supported by a network of operational institutions geared towards life-long learning processes support. Thus, costs related to professional re-conversion could be cut and an active behaviour on the

⁴⁵ XXX- Employment in Europe 2007, European Commission, Brussels, 2007.

labour market can be induced for larger segments of working age population.

The lifelong learning process is mainly shaped by two factors: a) modifications in the contents of the work and the status of certain jobs, b) characteristics of the institutional framework created for the respective activity.

In Romania, after 2000, certain actions were taken, in compliance with other Member States but also having certain particularities.

Occupational trends in Romania.

The restructuring of economic activities and the implementation of new technologies caused important modifications of certain jobs and mutations in the contents of the work. Three categories of occupations can be identified⁴⁶:

a) **Dominant occupations**, these are well-crystallised jobs, with a certain tradition in the Romanian employment model;

b) **Content changing occupations**, or in other words occupations strongly influenced by the restructuring of the economy. Such occupations can be found in industry but also in services where there is a concern to increase adaptability to the clients' needs;

c) **Piercing occupations**, which are basically jobs typical of new areas of activity, with an added value. These piercing occupations contribute to flexibilization of the employment model since they are typical of certain market niches and have a high degree of competences and skills. The working hours of these people with Piercing occupations are flexible; they have part-time contracts or contracts with determined duration. They accept atypical forms of employment because of the high degree of productivity.

In terms of economic sectors, the biggest technological changes were perceived in the processing industry, in constructions, transport and communications. Slower technological mutations took place in the mining industry, agriculture and fishing. In terms of companies, the biggest changes in technology and organisation of work took place in medium and big companies.

Consequently, the contents of work in many jobs incurred changes. The new requirements arisen in many jobs are related to the computer work and other IT equipment, management and communication knowledge, foreign languages. Hence, the strong need of life long learning, both for employees in the companies and for other categories of active population.

⁴⁶ INCSDMPS- *Evolution of jobs on the labour market in Romania before 2010*, Bucharest, 2005.

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For employees, continuous improving of one's qualification according to the trends in technological changes ensures the viability of one's job. For people in vulnerable groups, participation in various life long learning programmes becomes a condition to avoid marginalization.

Strong points and weak points of the institutional framework of the lifelong learning process

In Romania, as a result of the reform of the educational system, the National Council for Education and Continuous Training was set up under Governmental Emergency Ordinance no 36/1997. Thus, a legal framework was created to initiate and authorize educational programmes for adults, which is the most important part of the life long education process. In this context, conceptual clarifications were made regarding initial education, adult education, formal education, non-formal education, informal education⁴⁷.

Among the above-mentioned concepts, the most important role in the flexibilization of the labour force, in terms of life long education, is the non-formal adult education. In terms of adult education, the most important component is continuous professional training⁴⁸.

The continuous professional training was regulated by the Governmental Ordinance no 129/2000, which, on the whole, ensured compatibility between the Romanian practice and the EU practice. Its enforcement imposed reviewing through other normative acts (Governmental Ordinances, Governmental Decisions, Orders of the Minister of Labour and Education) between 2003 and 2006.

The correlation between adult education and flexibilization of labour force was also approached in other documents like: the Short term and Medium term Strategy for Continuous Professional Training 2005-2010, the National Programmes for Reforms 2007-2010, the Operational Sectoral Programme –Development of Human Resources 2007-2013, the Project of the Strategy for Integrated Development of Human Resources from the perspective of lifelong learning 2009-2020.

⁴⁷ Continuous Professional training in Romania, European Training Foundation, Bucharest, September 1998.

⁴⁸ Education of adults includes all situations of learning which follow the initial education or replace it and includes: a) continuous professional training, b) intensive programmes of teaching adults to read and write, c) leisure time education (cf. V.Vasile (coord), G.Zaman, S.Perț, F.Zarojanu- *Restructuring of Educational system in Romania from the perspective of the evolutions on the domestic market and impact upon progress of research*, SPOS no 2, IER, Bucharest, 2008.

Given the fact that in Romania, the participation rate of the population aged 25-64 years old in continuous training programmes is low compared to the EU average⁴⁹, the targets for this indicator were set as 7% for 2010, 10% for 2015 and 12% in 2020.

The enquiry conducted by the National Institute for Statistics during April 2007- March 2008 reveals a rate of participation of the population aged 25-64 years old in formal education of 3,6%, in non-formal education of 4,8% and informal education of 18,8%⁵⁰. If we consider the non-formal adult education to approximate the intensity of the life long education process, we can say that a certain progress has been made in Romania but there is still an important gap compared to the Member States in which the principles of flexicurity are implemented on a large scale.

Participation in non-formal education is higher in the urban areas (6,4%) than in rural areas (2,5%), with people aged 25-44 years old⁵¹ and employed people⁵².

The reasons that motivated participation in non-formal education were in 79,1% job-related. In terms of initial education, highest percentages have the people with high-school education (47,5%) and higher education (46,9%).

To note that, in the context of sensitive changes in the contents of technologies and organisation of work, companies paid more attention to improvement and updating of professional competences not only of their staff with secondary education, like after 2000, but also of their staff with higher education⁵³. The distribution of the educational level of the participants in the adult education programmes can also suggest that higher education does not always meet the performance requirements of

⁴⁹ In 2005, the participation rate of the population aged 25-64 years in programmes of education and continuous training was 10,2% in the EU, 1,6% in Romania, 1,3% in Bulgaria, 27,4% in Denmark, 1,9% in Greece, 7% in France, 15,9% in the Netherlands, 12,9% in Austria, 4,9% in Poland, 32,1% in Sweden.

⁵⁰ National Institute for Statistics- Adult Education in Romania, Bucharest, 2008.

⁵¹ Participation rate in non-formal education was 6,7% for 25-34 year group of age, 5,4% for 35-44 year group of age, 3,9% for 45-54 year group of age, 2,4% for 55-64 year group of age.

⁵² Participation rate in non-formal education was 6,6% with employed people, 2,2% with unemployed, 0,7% with inactive people.

⁵³ The study conducted in 2005 by INCSMPS (S.Pirciog, V.Ciucu, Mocanu C, Zamfir A.M.) reveals the following distribution of participants in professional training programmes, in terms of educational background: 67% had higher and post-graduate education, 23% had secondary, vocational and post-high-school education and 10% had a low level of education- secondary.

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companies, which imposes further attendance of forms of non-formal education for the staff with higher education.

Participation in the non-formal education programmes of people with higher education results into higher percentages of people, within these lifelong forms of education, which use the computer or at least one foreign language. For the 25-34 year old group, computer use occurs with 40,4% (annex no 3. 1.), whereas use of at least one foreign language occurs with 47,4% (annex no 3. 2.). With the other groups of age, the two indicators are significantly low which reveals two aspects:

a) increased abilities to work with computers and other IT, as to use foreign languages, as new adult generations integrate into the labour market, and

b) in designing strategies and policies on the implementation of new forms of organisation of work and flexibilization of the labour force, companies tend to take into account first the younger and more qualified employees.

In terms of financing of the non-formal education programmes, for more than half of the participants, the employers had no financial contribution (annex no 3. 3.). 42% of the participants paid entirely the costs of their non-formal education programmes. The involvement of employers into financing of various forms of non-formal education is higher as the level of initial education of the participants who take part into that form of improvement of professional qualification is higher.

The preoccupation for professional training is still present; other forms of non-formal education are preferred by big companies because of their concern to renew technologies and organisation of work and their concern about the financial resources available. In micro-companies and small companies, the preoccupations for updating the knowledge and the skills of the staff are significantly less relevant.

In terms of sectors of activity, there is a correlation between the intensity of the restructuring and implementation of new forms of organisation of work and support, by the company, of the continuous professional training. In terms of geographic areas, the rates of participation in life long education are positively correlated with the level of economic and social development. In addition, the offer of training courses or other forms of non-formal and informal education is larger in big cities than in small cities.

Although during the last years quantitative progress has been incurred, the impact of the lifelong learning process upon the implementation of the flexicurity principles is limited by some institutional

factors, by the concrete way to organize the respective activity or by the material and financial resources allocated.

Thus, the legislative framework regarding various forms of non-formal and informal education authorized to take place in Romania give disproportionate attention to institutional organisation. Under these circumstances, cumbersome, bureaucratic procedures to accredit institutions and organisations, which provide lifelong educational and professional training programmes, are generated.

There is no correlation between initial education and forms of education by which initial education is updated and adapted to requirements of the flexibilization of labour force in companies and to the new social realities either.

The lifelong educational and professional training is currently over-regulated, both by the provisions of the Labour Code, and by many orders issued by ministers of Labour and Education, norms and instructions for enforcement of the Governmental Emergency Ordinance no 129/2000. They regulate the authorization of the providers of non-formal educational services, the checks upon the logistics, the materials and the number of staff involved in teaching, as the certification of graduation of these courses. The quality of the methods used in the learning process, the degree to which knowledge is acquired and the working methods are not systematically evaluated.

The big number of bureaucratic practices leads to other negative consequences: deficit of staff and companies specialized in life long education and professional training, or unfair competition among the providers of these services. Another negative factor is the lack of a coherent hierarchical system for the certificates obtained upon graduation of the various forms of learning, in time.

The complicated procedures which have to be complied with in order to make use of the funds collected for the contribution for the unemployment benefits in order to organize courses of professional training discourage many employers to make use of this fiscal facility.

The involvement of social partners from the micro- and macro-economic levels in supporting the life long learning process is still low. The universities either haven't overcome the barriers of formal educations and haven't been actively involved in the updating of the knowledge of the human resources in companies and therefore in increasing the flexibility and adaptability of social actors to an extremely dynamic economic environment.

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Actions to increase the role of the life long learning process in expanded application of flexicurity principles in Romania

Correction of certain deficiencies in the life long learning and professional training would stimulate expansion and strengthening of the flexicurity principles on the Romanian labour market. In order to improve significantly the efficiency of the labour force, the main actions to take are:

a) to adopt an integrated view of the role that various forms of formal, non-formal and informal education have in creating and developing professional competences and working skills, and in active involvement in the civic life. This objective implies to stimulate a certain culture of life long education since the initial education⁵⁴, and to raise the awareness of the citizens regarding the benefits of such an undertaking;

b) to adopt a coherent legislative framework regarding the operation of the continuous educational and professional training system, so that to clearly establish the roles of public authorities, on the one hand, and to remove the excessive bureaucratic procedures, to facilitate the initiatives of social partners that are directly involved and the efficient allocation of resources, on the other hand;

c) to create a national database including the concrete forms of adult education, and a common reference framework for the quality of these services;

d) to conduct studies on the medium term and long-term impact of the efficiency of various forms of adult education, especially of the continuous professional training;

e) to correlate the contents of the curricula of continuous education and training programmes with the technological trends so that to avoid deficit of human capital in fields on which the sustainability of economic growth depends;

f) to pay special attention to increase the professional competence of the trainers involved in adult education;

g) to find ways to have universities involved in non-formal education in order to increase the quality of those activities;

h) to have social partners involved in continuous education and professional training through sector committees for professional training and company committees;

⁵⁴ V.Vasile (coord), G.Zaman, S.Petř, F.Zarojanu- *Restructuring of the Educational System in Romania from the point of view of the evolution of the domestic market and the impact upon the progress of research*, SPOS no 2, IER, Bucharest, 2008.

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g) to give fiscal incentives to companies which invest to increase qualification of their employees;

h) to adjust the Labour Code so that increasing of the qualification of employees should be not only a right but also an obligation of employees;

i) to recognize the efforts made by companies to increase qualification of employees and to find ways to recover the expenses thereof when accounting for increased external flexibility;

j) to stimulate development of adult education in rural areas and small cities;

k) to increase the role of IT in life long learning processes.

Chapter 3. IS THERE ANY ROMANIAN SPECIFIC FLEXI(SE)CURITY? CRITICAL ANALYSIS OF THE INSTITUTIONAL FRAMEWORK OF THE ROMANIAN LABOUR MARKET

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3.1. The discrete intervention of the EU legislator in the regulation of labour relations; Protection or the Romanian legislative option

Among various consequences of globalization, the legal ones are of interest: as a result of a long-lasting, increasingly accelerated harmonization process, the legal systems tend to become similar, there are more and more similarities in jurisprudence and laws.

It may therefore seem surprising that the regulations governing working relations in various legal systems of the European Member States are still very different. The EU itself does not seem to have wanted to harmonize the labour legislations in its Member States and allowed each system to regulate its own individual and collective working relations. The small number of directives and regulations adopted in the labour law proves that domestic regulating autonomy is stronger than in other laws; domestic regulations prevail, not the EU regulations.

Even if regulations in labour law are different, the European law understood as totality of labour regulations in all EU Member States does not lack its own identity. We can even say that its identity is not necessarily related to globalization but to a common legal spirit and to common traditions⁵⁵.

Against this European labour law, some particular features of the Romanian legislation in the field can be revealed. Some of them are positive and make their contribution to the diversity of the European labour legislation, others are subject of controversial debates.

Labour law is, by definition, a protective law. As the saying goes, *between the strong and the weak, the rich and the poor, freedom oppresses and law sets free....* this is how labour law was created and was defined as protective law, which not only regulates neutrally the relations between

⁵⁵ It allowed configuring of what is today the European Social Model.

parties, by protecting the interests of the third parties (like in the civil law) but also protects, by special norms, the party having a more fragile position: the employee.

The protection degree and the ways to protect are different from one law system to another. It is important to know it when we identify the obstacles, which the national lawmakers face while implementing the flexicurity principles.

Unlike the old Member States, for the countries that recently joined the EU, the road to flexicurity goes from total Security (from which employees benefited before 1989), not the other way round, from total Flexibility (like in Western Europe, as expression of the market economy) to flexicurity. Since the road is different, obviously the ways to implement the concept will be different. The new Member States have their own specific situations that impose different approaches of flexicurity principles.

Even when compared to the other new Member States, the Romanian labour law is perceived as more protective towards employees.

In 2003, when it was adopted, the Labour Code provided responsibilities (among others) in two main areas:

- to limit abuses in the working relations. For instance, there was a practice of non-defined trial periods, extended endlessly, during which, most often, the employees were not given their rights, sometimes not even their salaries. Against this practice, the Code regulated the trial period in such a restrictive way that, for some time, it was not even used. The Labour Code had to be amended in 2005 to partially simplify the procedure to check the professional skills of a newly hired employee;

- high expectations of the beneficiaries of the Code regarding the Security of the job. For instance, restrictions upon the reasons based on which a person could be dismissed⁵⁶, restrictions upon the termination of the labour contract, even if a prior notice was given, and enforcement of strict procedures – these were rules that met certain expectations and they were well received by the Romanian society, even if in the comparative law, some of them were singular.

The stringency of the Labour Code towards the employer, the rigidity of some regulations and its high protectionism towards the employee had therefore social and historical motivations.

⁵⁶ In our legal system, it is not jurisprudence that defines the „right cause”, to justify a valid dismissal of a person, but the law-makers defined the valid arguments to decide upon termination of a labour contract.

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Since 2003 until present day, there have been modifications made in order to render the Code more flexible⁵⁷. Flexibilization is no longer seen today as the exclusive goal of the employer.

Moreover, it was noticed that an over-protective legislation is seldom complied with. Sometimes, in the structure of perfect protection ensured by labour law, breaches occur. For example, despite the efforts made during the first years of the Labour Code, the lawmakers could not prevent the conclusion of civil service contracts. These contracts hide working relations in which the person is far from being independent but he/she has exactly the subordinated position of an employee without having the protection provided by the law. Preventing these contracts – concluded in other countries as well – turned out to be impossible.

Infringement of the protective legal provisions takes place sometimes with the (corrupt) „consent” of the employees themselves, either in exchange of a salary higher than the average salary (average lower than the European average) or simply in exchange of preserving of one’s job, when laying off employees is a frequent practice dictated by the general economic crisis.

Under these circumstances, the Romanian lawmakers’ choice of protective norms, which had social and historical reasons in 2003, is currently explained differently. Practice reacted by looking for breaches in the restrictive norms and by forcing out the permissive areas of the laws; in 2005, 2006 and 2007, amendments were made to the Code. However, the implementation of the flexicurity principles faces higher protection in the Romanian legislation than in other European legislations, which makes it difficult to choose among the „consecrated” systems of flexicurity and to design a flexicurity type that focuses upon security. Among these regulations, we shall analyse the hiring and dismissal procedures.

⁵⁷ Law no 53/2003, published in the "Official Gazette of Romania", part I, no 72 on 5 February 2003 was modified by: Governmental Emergency Ordinance no 65/2005, published in the "Official Gazette of Romania", part I, no 576 on 5 July 2005, approved by Law no 371/2005 published in the "Official Gazette of Romania", part I, no 147 on 19 December 2005; Governmental Emergency Ordinance no. 55/2006, published in the "Official Gazette of Romania", part I, no 788 on 18 September 2006, approved by Law no 94/2007, published in "Official Gazette of Romania", part I, no 264 on 19 April 2007; Law no 237 on 12 July 2007, in the "Official Gazette of Romania", part I, no. 497 on 12 July 2007.

A. Hiring procedures

From the definition, flexicurity proposes a more flexible approach of the hiring and dismissal procedures, among other things.

In the Romanian legislation, individual negotiation, prior to the conclusion of the individual labour contract, is forbidden by derogation from the labour law or from the collective bargaining labour contract. According to art. 38 in the Labour Code, the parties cannot depart from the provisions of the law, and of the applicable collective bargaining labour contract respectively, unless it is in favour of the employee.

What is or not favourable to the employee is assessed by analyzing each provision, not the entire contract as a whole, each provision can be therefore cancelled if it contains juridical definitions that are less favourable than the legal provisions.

This procedure is not unique; it can be found in other European legal systems like the German legal system for instance. The problem is that the procedure is enforced in the framework of a law system that already regulates in detail each contractual provision. The provisions stipulated in the labour contract are strictly regulated under the law and the template of the labour contract is approved by laws. The lack of flexibility inherited in the contractual provisions that turn to be mere *ad litteram* translations of the legal provisions, in most case, makes the road to simplified hiring procedures to be still a long one.

There have been however attempts towards flexibilization. If originally, art. 17 in the Labour Code stipulated that a candidate to a job had to be informed about all the important provisions in his future labour contract prior to concluding the contract⁵⁸, currently, this obligation to inform the person selected to be hired is considered as fulfilled by the employer at the moment when the individual labour contract is signed⁵⁹.

As mentioned before, the juridical status of the trial period has changed in the sense that currently, the labour contract can be ended during its execution by mere written notification of the parties⁶⁰.

In addition, the working hours could be customized and atypical labour contracts have appeared in the Romanian legislation⁶¹.

⁵⁸ This obligation exceeds the provisions of the Directive 91/533/CEE regarding the obligation of the employer to inform the employees about the terms and conditions applicable to one's labour contract/ working relation.

⁵⁹ Art. 17 para. (1)¹, introduced by Governmental Emergency Ordinance no. 65/2005.

⁶⁰ Art. 31 para. (4)¹, introduced by Governmental Emergency Ordinance no. 65/2005.

⁶¹ See *infra*.

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Despite these „oases of Flexibility”, in general, the compromise margin that the parties can adopt during individual negotiations is limited; upon the hiring of the employee, the parties have few mechanisms to adjust the relation between them to the concrete situation.

B. Unfair competition clause

Regulations covering the non-competition provisions, as stipulated in art. 21 and the following in the Labour Code are difficult to comply with in practice; most of these clauses concluded between the parties will have no juridical effects because such clause is valid only if :

- the obligation of the employer to pay to his former employee, after the end of the labour contract, in exchange of the latter’s promise of non-competition, a benefit tantamount to ½ of the salary⁶², during the non-competition period stipulated;
- all the third parties in favour of which the employee is forbidden to perform activities⁶³ are specified;
- all activities, in a limitative enumeration, forbidden to the former employee are specified;
- the geographical area covered by the interdiction and the duration of the interdiction are specified (maximum of 2 years);
- the employee is given the possibility to exercise one’s job.

The parties would be able to depart from these provisions during individual negotiations only in favour of the employee; these provisions would be only legal basics. Even if the above-mentioned rules have been complied with, a court of law could still decide that in practice, the non-competition provision is too costly for the employee.

The number of litigations in court regarding failure to comply with the non-competition provision is still low as the current form of art. 21 in the Labour Code entered into force in 2005. It will be in some time from now that the labour contracts of employees that included a non-competition provision will disappear and the entering into force of the interdiction period will begin. After analyzing the litigations already solved by courts of law,

⁶² At least 50% of the average gross salaries of the employee over the last 6 months before the date when one’s individual labour contract ended or, if the duration of the individual labour contract was less than 6 months, of the average gross salaries owed to the employee for the duration of the contract.

⁶³ It is difficult for the parties, upon conclusion of the non-competition provision, to take into account all the third competitors of the employer because, until the provision enters into force (only after the labour contract terminates) new competitors may appear on the market.

we come to the conclusion that all the non-competition provisions concluded turned to be illegally concluded therefore, have no juridical effect.

When he had to choose between the employer's interest not to be competed by his former employees and the employee's interest not to have his constitutional right limited, the lawmakers chose to be highly protective towards employees and they restricted significantly the individual negotiation margin.

C. Dismissal procedures

In most European law systems there are different standards to analyse the legality of dismissing employees without prior notification (for serious reasons) against dismissing employees with prior notification. In the latter case, dismissal is forbidden on grounds clearly stipulated in laws (such as political, discriminatory reasons or union membership); however, the employer can dismiss the employee unrestrictedly for another reason if he complies with the prior notification requirement. The dismissal can be considered as non-valid if there was no prior notification of if it was invoked a reason among the forbidden ones.

The distinction made by the Romanian lawmakers is different; the difference is made between dismissal on grounds that are related to the employee and dismissal on grounds that are not related to the employee. Dismissal on grounds that are related to the employee, stipulated in art. 61 in the Labour Code can be done under rather restrictive conditions, irrespective if there was or not a prior notice. Dismissal for professional misconduct (with prior notification), in other law systems is the most common reason to dismiss; it requires two sets of conditions: stipulated in the Labour Code, regarding prior assessment, and stipulated in the National Collective Bargaining Labour Contract for 2007-2010, regarding prior investigation. In addition, the law stipulates the right of the employee with professional misconduct to be appointed on a different position, corresponding to his professional training.

However, dismissal of employees on grounds that are not related to their behaviour has become easier. In 2006, art. 65 regarding dismissal of employees on grounds that are not related to their behaviour, was amended so as to include more stipulations⁶⁴.

⁶⁴ Initially, art. 65 stipulated the reasons for dismissal with no relation to the behaviour of the employee: „Dismissal for reasons that are not related to the behaviour of the employee means termination of the individual labour contract caused by the job cuts as a result of

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In terms of procedures, the dismissal of an employee takes place under strict requirements regarding the form. Under the law, it is compulsory to have the dismissal decision in writing and to include a certain number of information⁶⁵, otherwise the dismissal is void. Depending on the reason of dismissal, the employer shall also comply with other requirements: deadlines, preliminary procedures, offer for another job, notification to the Employment Agency etc. Failure to comply with these obligations shall render the dismissal void and the court of law appealed to in such case will no longer analyse the dismissal. In court, the employer shall produce all evidence during the first hearing. The procedural requirements cannot be met later on and the void nature of the dismissal cannot be changed any more⁶⁶. The employer will be punished to pay damages⁶⁷, and the employee will be reintegrated.

The Romanian regulation according to which the employee who won the case contesting the dismissal in court is reintegrated has some particular features.

If the dismissed employee who won the case and annulled his dismissal requests his reintegration, the court has no competence to

economic and technological changes or as a result of restructuring of the business". It is currently provided that (somehow tautologically): "Dismissal on grounds that are not related to the employee means termination of the individual labour contract caused by the fact that the job of the respective employee has been cut off, for one or several reasons that are not related to the employee".

Furthermore, in case of individual dismissal on grounds that are not related to the employee, it is not forbidden to re-create that position after the dismissal of the employee, which in practice made it sometimes possible to dismiss abusively under art. 65.

⁶⁵ Among which, information about the deadline within which one can contest the dismissal decision and the competent court with which the decision can be contested. Romanian courts annulled dismissal decisions that lacked this information even if the employee had contested the decision within the lawful deadline and with the competent court, thus proving that he had been aware of these.

⁶⁶ Unlike other European law systems, like the French one (see art. L. 1214-4 in the French Labour Code, providing that "if dismissal of an employee occurs without compliance with the procedure required under this section, but as a result of a real and serious cause, the court shall ask the employer to comply with the procedure provided and to pay the employee a compensation that shall not exceed a one-month salary").

⁶⁷ Under Law no 237/2007, art. 269 in the Labour Code was changed by forcing the employer to pay not only materials damages but also moral damages. There is however no symmetry of the text; the employee cannot be forced to pay damages to his employer, irrespective of the prejudice.

pronounce it. . No proof is required from the employee so as to document his or her search for alternative employment⁶⁸.

An important consequence of the reintegration decision will be felt by the employee newly hired on the position left available by the previous employee. As a result of the reintegration decision, the labour contract of the employee hired meanwhile on that position will end.

It is important to keep in mind that the International Labour Organisation, through its Freedom of Association Committee, expressed the obligation of the employer to reintegrate in case where the dismissal was done on grounds of union membership⁶⁹. The Romanian law stipulates reintegration *in all cases*, even if the dismissal was annulled simply because of procedural reasons.

D. Migration of employees

One particular feature of the labour force in Romania as well as in many new member states is the migration of the employees. The size of this phenomenon has shrunk because of the economic crisis but it is still significant. Migrant employees are covered neither by the Romanian law, in terms of labour Security, nor by the laws of the destination countries (because of their uncertain status, most often they are temporary employees or even illegal employees), and they have no right to assistance provided to unemployed people. Their lack of labour Security is often caused by their lack of information⁷⁰. This is a concern for the EU lawmakers, interested in coordinating the social security systems of the migrant employees but also in the protection of the transferred employees⁷¹.

Irrespective of view, the fact that migrant employees do not enjoy the same labour security like the local employees has a significant impact upon the way flexicurity is understood in the countries of origin.

⁶⁸ Like in other European law systems. For example, in the English law, see K.R. Abbott, N. Pendlebury, *Business Law*, DP Publications Ltd., London, p. 418.

⁶⁹ The Freedom of Association Committee, Cases No. 1678, 1695, 1781.

⁷⁰ See also R. Dimitriu, Responsibilities of the Origin State in the Protection of Migrant Workers. The Case of Romania, Cahiers de l'Urmis, N°12 | June 2009 <http://urmis.revues.org>

⁷¹ Directive 96/71/CE regarding the temporary transfer of employees within the service framework anticipated somehow the views on which art. 8 in "Roma I" Regulations (Regulation (CE) no 593/2008 of the European Parliament and of the Council of 17 June 2008 regarding the law applicable to contractual obligations) were based. Employees cannot be deprived of minimal norms applicable to the workplace.

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E. The road from Security to flexi-Security

The concrete ways for the lawmakers to shift the focus from the security of the labour contracts towards flexicurity has been of interest for the Romanian legal systems since 2007⁷².

Legally speaking, the Romanian flexicurity paradigm could be currently defined if the following requirements are observed:

1. minimal restrictions in the EU labour law and domestic freedom to regulate more than in other law fields;
2. high expectations of employees with regards to labour security. Definitely, the economic crisis is going to cause mutations in this respect but in an unpredictable and disorganized way, not as part of strategy to amend perception of the job stability;
3. protective regulations for the employee, which were taken over from one Labour Code to another. This may result in lack of protection for those who have no labour contract; over-protection of *insiders* triggers lack of protection of *outsiders*, who will face an unbreakable barrier in front of them when they want to get a job;
4. deficit of labour security in the case of migrant employees.

These aspects make the Romanian legal provisions be perceived as particular and give the lawmakers a difficult task. Because it is the Romanian law-makers and not the EU ones that implement them; it is assumed that flexicurity shall not be implemented through directives and regulations; then, because law-makers must overcome certain expectations regarding job security and a certain inertia of the labour force, often reluctant to professional re-orientation; finally, because the experience of the other law systems, including those of the new Member States, can be less useful than we would have wanted or expected.

Upon accession to the EU, on the 1 January 2007, the Romanian labour legislation was entirely harmonized. The Labour Code and the special laws regulating the working relations were compliant with the EU regulations applicable to the working relations. This does not mean that we have a common starting point in achieving the flexicurity goals or that the road to flexicurity will be the same.

⁷² To see for instance I.T. Ștefănescu, *Impact of globalization upon labour and social security law – European perspective*, in „Dreptul” no. 4/2008, p. 68 - 87; Al. Țiclea, *Flexisecurity – current concept*, in „Romanian Magazine for Labour Law” no 6/2007, p. 9 – 24; Al. Țiclea, *New discussions on flexicurity*, in „Romanian Magazine for Labour Law”, no 1/2008, p. 11-17; R. Dimitriu, *Flexibilization trends of working relations*, in „Romanian Law Studies” no 1-2/2008, p. 241-255 etc.

Before assimilating it, flexicurity must be organically assimilated by the structures of society. Some risks accompany the assimilation of flexicurity and unions have drawn attention upon these risks several times. These risks imply especially the consequences of partial application of flexicurity strategies only as flexibilization.

Changing one workplace with another is still difficult, the hiring and the dismissal procedures are still complex. However, flexicurity implies not only flexibilization of contractual relations (when law-makers face rather social obstacles than economic ones), but also improvement of life long professional training, development of active policies of the labour market and implementation of modern social security systems.

The four components should be accommodated by the Romanian policies at the same time and in a balanced way.

In other words, mere flexibilization of the dismissal procedure will not trigger, in itself, the attraction of labour force from *outsiders* if it is not accompanied by all the other components of flexicurity, which is a complex concept. On the other hand, removal of the protection enjoyed currently by Romanian employees (even if it is the least costly measures implied by flexicurity) cannot be a stake in itself if not accompanied by increased protection given to individuals who are not employees at the moment.

If flexibilization implies deregulation and removal of restrictions upon contractual relations, then it can rather generate than solve social problems.

3.2. Translation of flexicurity principles: Law *versus* Collective Bargaining labour contract

Once admitted as desirable, flexicurity would be implemented by each Member State according to its own sequence of jurisprudence. Sometimes the intervention of the law-makers, as part of governmental policies to enhance either flexibility or labour security and to preserve their balance, or the collective bargaining, finalized by concluding collective bargaining labour contracts – was the main way to re-orient the working relations in a flexicurity spirit.

From this point of view, what is the way to translate the flexicurity principles in Romania?

A. Social partners

Like in other law systems, social partners have different views upon the relation between labour flexibility and security.

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Basically, the entrepreneurs' associations focus on the „flexibility” element in this new system and on the possibility to simplify the hiring and the dismissal procedures. In the entrepreneurs' approach, it is important to increase competitiveness of labour force and to reduce the intervention of the state in regulating the working relations (intervention that is seen as very large in Romania). A re-sizing of the involvement of companies if desired through increased social responsibility.

On the contrary, unions insist upon the need to maintain security and define flexicurity as a „mere alibi for the flexibilization of working relations”. The concept itself is seen as a step back of social policy. The reluctance of the unions is generally motivated by that fact that employees would lose their strong labour stability they are currently enjoying under the current Labour Code.

Beyond all these rather theoretical points of view, how can social partners really get involved in designing and implementing flexicurity policies?

B. Particularities of the social dialogue

Implementing flexicurity by collective bargaining would have significant advantages among which the agreement of social partners upon the measures adopted would lead to social peace and their real implementation.

Compared to other countries, we must emphasize that the Romanian social dialogue and collective bargaining have some specific features which (added to the normal differences in opinions of social partners in regard to flexicurity as a whole) may render difficult the adoption of flexicurity policies in this way.

The legislation on collective bargaining entered into force more than 10 years before Romania joined the EU⁷³ and, while the regulations on individual labour relations incurred several changes that rendered them more flexible, we cannot say the same about the legislation on collective labour relations.

Here are some norms currently applicable in this field. Each of them has its own justification and is not unique among the European law systems but as a whole, they make up a set of rather rigid rules that may prevent or postpone the achievement of a balance, through social dialogue, between security and flexibility:

⁷³ Law no 130/1996 regarding the collective bargaining contract, republished in Official Gazette no. 184 of 19 May 1998.

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- one collective bargaining labour contract, per field of activity;
- the collective bargaining labour contract cannot be negotiated by employees that are not union members, in companies where there are unions;

- *erga omnes* applicability of the collective bargaining labour contracts concluded, to employees and employers that are representatives and take part in negotiations, as well as to those who have not been represented thereby. This is why the Romanian law does not have the concept of *extension* by governmental act of the provisions of a labour contract (which is familiar to most European law systems). The collective labour contract is already „extended” by simply entering into force. This can generate sometimes a certain lack of union’s involvement⁷⁴;

- collective bargaining of the collective labour contract exclusively to the advantage of the employees when concluded at higher levels⁷⁵.

The interdiction to negotiate in *pejus*, with a legislation that is already highly protective and with national and sector collective contracts that are already too detailed makes impossible the negotiation for additional rights of the employees within a company. The employer is already overwhelmed (saturated) by collective contracts concluded at higher levels, especially at national level. Hence, (this shall not be considered as the only cause) the small number of collective labour contracts concluded within a company⁷⁶. In the top of collective labour contracts, the national collective contracts have the biggest weight;

- collective bargaining within a company should be compulsory, not optional. Failure to meet this obligation shall imply that the employer has committed an offence and he would be liable under the law, which is not recommended by the International Labour Organisation⁷⁷;

- legality of the strike only when conflicts of interests not when conflicts of rights⁷⁸;

⁷⁴ Since the collective contract is applicable to all employees, some of them can hesitate to join unions since they would anyway enjoy the results of the bargaining.

⁷⁵ From this point of view, to see what law system adopted which option, see R. REBHAIN, *Collective Labour Law in Europe in a Comparative Perspective*, “The International Journal of Comparative Labour Law and Industrial Relations”, Vol. 19/3, 271-295, 2003 and Vol. 20/1, 107-132, 2004.

⁷⁶ For instance, in 2008, 11,729 collective contracts were concluded per company.

⁷⁷ It would be thus an infringement of the principle asserting the voluntary nature of collective bargaining. To note that other law systems, like the French one, include this obligation.

⁷⁸ This regulating attempt also raised the reluctance of the International Labour Organization (International Labour Conference, 1994, *Freedom of association and*

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- prohibition for the employer to do a *lock-out*;
- right to be represented by unions not as a result of quantitative requirements but also as a result of joining a representative union⁷⁹;
- hesitant regulations regarding the rights of employees who are not union members which causes their passivity. Despite the fact that, under the law, collective contracts can be negotiated and concluded not only by unions but also by representatives of the employees (in companies with the unions), in Romania, there are few collective contracts negotiated and concluded by employees that are not union members. This may mean that the employees have not found yet efficient representation mechanisms, others than unions, through which they could exercise their constitutional right to collective bargaining.

Each of the above-mentioned regulations has its own motivation but the **entire set of motivations** can slow down the flexibilization of collective bargaining. Consequently, it would be reasonable to state that implementation of flexicurity principles through social dialogue depends on flexibilization of collective bargaining itself.

C. Legislative path

Generally, in our law system, the working relations are regulated by laws so the freedom of social partners to negotiate their rights and obligations is restricted.

Until now, flexicurity has not been a topic of social dialogue but rather of the lawmakers. Even in other European countries, some authors consider that social partners have limited possibilities to influence the strategic social orientation⁸⁰.

collective bargaining: Protection against acts of anti-union discrimination, Report of the Committee of Experts on the Application of Conventions and Recommendations, 81 Session, Geneva, 1994, Report III (Part 4B), p. 73). However it is not the only case; the German law has adopted the same system.

⁷⁹ Fact stipulated in Decision no 7 of 21 January 2008 to analyse the appeal in the interest of the law, made by the general prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, regarding interpretation and enforcement of provisions of art. 17 para. (1) letter c) and of art. 18 para. (3) final thesis in Law no 130/1996 regarding the collective labour contract, republished, regarding the requirements to meet in order to get representativity by unions existing within the company, published in Official Gazette of Romania, Part I, no 691 of 10 October 2008.

⁸⁰ G. Gradev, *Social Dialogue and Trade Unions in Enlarging Europe: Losers among Winners?*, in „Trade Union Strategies in Central and Eastern Europe: Towards Decent Work” (eds. D. Dimitrova, J. Vilroks), ILO, 2005.

In addition, participants to the dialogue between entrepreneurs and unions are not always interested in regulating the status of the *outsiders* whose interests are not, in most cases, protected during social dialogue.

About the current status of the regulating of collective bargaining in Romania, we can say that the Romanian society seems to wait for an intervention of lawmakers to implement flexicurity. Implementing flexicurity can be part of a set of measures that imply political and governmental options: investment in continuous training, active measures for efficient employment or encouragement of employment.

Given the current legal status, the actions meant to implement flexicurity in our system can be considered the responsibility of lawmakers but also of the social partners. There is no unique best way to implement these measures; involvement of several components of the Romanian society is needed. Flexicurity is a complex concept which requires a balance among 4 components: flexible and certain labour contractual relations; life long integrated learning strategies, able to ensure a high employment potential especially for vulnerable groups; active and efficient employment measures meant to support the employees in facing rapid changes and to simplify transition towards new workplaces; modern systems of social security. To take into account only one such component and to ignore the others would only lead to a disequilibrium greater than the one flexicurity tries to reduce.

Flexicurity should be therefore applied in a flexible way, as a result of social dialogue and expression of a coherent legislative policy.

3.3. Flexibilization of contractual relations

Atypical labour contracts, like the part-time, homework, multiple functions, temporary work – are regulated by the Romanian law and become increasingly common in everyday practice of working relations. However, they are not used as frequent as in other EU countries⁸¹.

A. Contract with non-determined duration

The first characteristic of the Romanian law system from the point of view of categories of contractual relations based on which the working

⁸¹ For instance, the average number of labour contracts with determined duration was in 2005 of 13,6% of the total number of contracts in the EU while in Romania it was only 2,5%. See S. Cazes, A. Nesporova, *Flexicurity, a relevant approach in Central an Eastern Europe*, Geneva, International Labour Office, 2007, p. 20. The low percentage is partially due to the restrictive nature of the regulations on contracts with determined duration.

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relations operate is that the labour contract with non-determined duration and full working hours is the rule. Any other contractual relations are exceptions of regulations and interpretation.

The parties cannot choose between a contract with non-determined duration or determined duration; they can conclude a contract with determined duration only if they can produce evidence of one of the situations stipulated in laws when such a contract can be concluded.

In addition, if an atypical labour contract (homework, part-time etc.) has not been concluded in writing, it shall be considered as concluded for a non-determined duration, irrespective of the wish of the parties.

The provisions of Directive of EC no 91/383/CEE supplementing the measures to encourage improvements in the safety health at work of employees with determined duration or temporary employment relationships, and of the Directive of the EC no 99/70/CE regarding the framework agreement of the work relations with determined duration prohibit any discrimination between employees with non-determined duration and those with determined duration, without specifying which of the two should be the rule and which should be the exception.

Consequently, the option to set the rule as contract with non-determined duration and the exception as contract with determine duration belongs to the national lawmakers.

B. Freedom of option regarding atypical contracts

If flexibilization of contractual relations is reflected by a significant number of atypical labour contracts, a useful indicator will be not the number of contracts with determined duration and with part-time, respectively, but the number of *voluntary fixed-term or part-time contracts*, because (especially during crises) more such contracts can be concluded not as an expression of the employees' wish but forcibly, because of the threat of unemployment.

Hence, not any alternative form of contractual relation is an expression of flexibilization of forms of employment but only those that really reflect the legal wish of the parties.

Theoretically, flexible contractual arrangements lead to reconciliation of private activities and family and professional activities. However, the reason for which an employee would choose flexible or part-time working hours must be understood within the context of current regulations regarding fulfilment of family responsibilities. In a law system where the postnatal leave and the child-raising leave are short, the flexible working hours are a solution to find a balance between professional activity

and child rearing. On the contrary, in Romania, the child-raising leave has 2 years and, according to the collective bargaining labour contract, the labour contract can be suspended for one additional year (third year), unpaid leave, and the position can be preserved. In case of sick child, the leave is paid for 3 years; in addition, there is a culture of raising children in families, looked after by older family members. Under these circumstances, we can assume that in many cases, part-time contracts are concluded rather because of lack of options than because of the employee's own will as the employee seeks to balance parental responsibilities with one's career.

C. Labour contract with determined duration

According to the Romanian law, the labour contract shall be concluded only for non-determined durations and only as exceptions, with determined duration⁸².

The law stipulates exhaustively the reasons for which the parties are entitled to conclude a labour contract with determined duration; any contract that does not stipulate it explicitly shall be interpreted as having a non-determined duration.

To note that the number of cases where it is possible to conclude contracts with determined duration is increasing, after the amendment of the Labour Code in 2005. Currently, art. 81 in the Labour Code stipulates that contracts with determined duration can be concluded in the following cases:

a) *to replace an employee when one's labour contract was suspended, except for the case when that employee goes on strike.* Under art. 53 thesis II in law no 168/1999 regarding the solving of labour conflicts⁸³, "the management of the company shall not hire employees to replace the employees on strike";

b) *Increased activity.* in this case, contracts with determined duration can be concluded if two proofs are produced:

- Highly increased activity;
- Temporary nature of this increased activity.

⁸² To perform an analysis of this contract, see, I.T. Ștefănescu, *Labour Law Paper*, Wolters Kluwer Publishing House, p. 414; Al. Țiclea, *Treaty on Labour Law*, Universul Juridic, 2007, p. 421-428; Al. Athanasiu, M. Volonciu, L. Dima, O. Cazan, *Labour Code. Comments on articles*, CH Beck Publishing House, Bucharest, 2007, p. 424 – 472; R. Dimitriu, *Labour contract with determined duration*, in „Working Relations” no 1/2006, p. 25 – 28; O. Ținca, *Comments on the labour contract with determined duration*, in "Romanian Magazine on Labour Law" no 1/2007, p. 20 – 27.

⁸³ Published in "Official Gazette of Romania", part I, no .582 of 29 November 1999.

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c) *Season-related activities*. If invoked this reason to conclude contracts with determined duration, it is not the increased amount of activity taken into account but a particular activity performed by the respective employee.

d) *when concluded under legal provisions adopted in order to temporarily favour certain unemployed persons*. Often, these provisions aim at reducing unemployment in a certain area or field of activity and at boosting activity, for instance by subsidizing the employers.

e) *hiring of a person who within 5 years since the hiring date, will meet the requirements to retire upon age limitation*. This provision, introduced by Governmental Emergency Ordinance no 65/2005, aims at reinsertion, on the labour market, of aged employees who are at the end of their career.

When analyzing the extent to which a person meets the retirement requirements after 5 years, there shall be taken into account not the standard retirement age and the minimal contributions at the moment but those valid after 5 years, as stipulated in Law no 19/2000, with further modifications.

f) *holding of an eligible position with unions, entrepreneurs' associations or NGOs, during one's mandate*. This provision related to the conclusion of contracts with determined duration raised some practical problems because the law does not make exceptions from the maximal duration of 24 months in the case of this provision related to the conclusion of contracts with determined duration, even if the mandate is longer.

g) *hiring of retired persons who, under the law, can cumulate pensions with salaries*. These are people who retired at retirement age and retired people who have 3rd degree disabilities.

h) *other cases stipulated by special laws, or in order to perform works, projects, programmes, under the provisions stipulated in the national and / or field collective bargaining labour contract*. Labour contracts with determined duration are limited in time but can be concluded also to perform a work, to do a project or a programme

Under the Romanian law, the employer shall conclude labour contracts in writing; in case of failure, the employer shall be sanctioned with a fine for this offence. In case of contracts with determined duration, transparency of contractual provisions is even more important in the sense that a contract that has not been concluded in writing is assumed to be concluded with non-determined duration. Hence, a contract concluded with determined duration shall be always written.

When the Labour Code was negotiated in 2003, and when its amendments were negotiated in 2005, the union confederations insisted to preserve the exceptional character of these contracts in order to ensure labour stability for employees. However, the entrepreneurs' associations supported the need of more permissive norms in order to increase the flexibility of the labour relations. As a result of these negotiations, the union confederations seemed to have won; the laws maintained the exceptional character of cases where contracts with determined duration could be concluded.

To note that other EU law systems have less restrictive regulations regarding the conclusion of contracts with determined duration. Often, the option to conclude these contracts is left exclusively to the parties and no legislative restrictions are imposed.

Here are some examples of regulations in the new EU Member States:

In the Czech Republic, art. 30 in the Labour Code stipulates that a labour contract shall be concluded with non-determined duration, except for the case when the parties clearly stipulate that it shall be concluded with determined duration. There is an assumption that contracts are concluded with non-determined duration; beyond this assumption, the conclusion of contracts with determined duration is not restricted.

In Hungary, art. 79 in the Labour Code stipulates that the labour contract shall be concluded with non-determined duration. By derogation from this rule, the parties can conclude labour contracts with determined duration, without motivating this option.

Similarly, in Poland, the conclusion of contracts with determined duration is left to the decision of the parties.

In Lithuania, the labour contract with determined duration cannot be concluded in case of an activity with a permanent character but the collective bargaining contract can be concluded by derogation from this rule⁸⁴.

⁸⁴ When asked if the conclusion of contracts with determined duration is acceptable or not, if a specific reason lack, the answers are very different from one country to another:

Czech Republic	Yes	Germany	Yes	Italy	Yes
Hungary	Yes	Portugal	No	Finland	Yes
Estonia	No	Slovenia	No	Sweden	Yes
Lithuania	Yes	The Netherlands	Yes	Spain	No
Poland	Yes	Austria	Yes	Belgium	Yes

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D. Temporary labour contract

This type of labour contract is regulated by art. 87 - 100 in the Labour Code, and by Governmental Decision no 938/2004 regarding the registration, operation and authorization procedure for the temporary work agent⁸⁵.

Temporary work is work done by a temporary employee who, upon instruction from the temporary work agent, performs the work in favour of a user. The temporary employee is the person hired by an employer who is a temporary work agent, and leased to a user for some time in order to fulfil certain clear and temporary tasks.

The temporary work agent is the commercial company authorized by the Ministry of Labour, which temporarily gives the user some skilled and/or unskilled personnel that it hires and pays for this purpose. The user is the employer whom the temporary work agent provides with a temporary employee in order to fulfil certain clear and temporary tasks.

Consequently, the temporary work legal framework is “triangular” implying, with their rights and obligations thereof, three parties: temporary employee, user and temporary work agent. Two contracts are put together: an individual labour contract between the temporary work agent and temporary employee, and a lease contract between the temporary work agent and user.

Even if Romania has not ratified yet the Convention of the International Labour Organisation no 181/1997 on the private employment agencies, the Romanian regulations are compatible with the ones stipulated in this convention.

Under art. 93, paragraph 2 in the Labour Code, the temporary labour contract shall be concluded in writing between the temporary work agent and the temporary employee, usually for the duration of the mission.

There is no labour contract between user and temporary employee. There is no contractual relation in fact⁸⁶. The employee has a contractual relation exclusively with the temporary work agent who pays his salary and in front of whom the employee is liable for professional conduct.

Although regulated, the temporary labour contracts are less used in Romania, unlike other European countries. Currently, 2-10% of the EU

⁸⁵ Published in the "Official Gazette of Romania", part I, no 589 of 1 July 2004, modified by Governmental Decision 226/2005, published in the "Official Gazette of Romania", part I, no 277 of 4 April 2005.

⁸⁶ However, the mutual rights and obligations existing between the parties lead to the conclusion that there are some quasi-contractual relations.

active population works under this kind of contracts. However, not all EU member states define these contracts as labour contracts⁸⁷.

E. Part-time labour contract

In the field of part-time labour contracts, the Directive 97/81/CE of the EC, adopted on 15 December 1997, on the framework agreement between the social partners on part-time work, concluded between the Union of European Industrial Confederations Employers, the European Confederation of Unions and the European Centre of Public Partnership Businesses, modified by Directive 23/1998/CE of the EC.

According to a study conducted by the International Labour Organisation, these part-time contracts are very important to reconcile private life and professional life, especially with youth, aged and women⁸⁸.

The Romanian Labour Code does not provide currently a minimal working time; the capacity of employee is defined by other criteria, independent from the working time, like the dependent character of the work performed by the employee and the continuous character of the work.

If the work is shorter than 8 hours per day, or 40 hours per week, respectively, the legal regulations applicable to employees is different in many aspects. The employees with part-time labour contract have two categories of rights:

- Rights deriving from their mere capacity of employee and they are not subject to proportional entitlement⁸⁹;
- Rights that are given proportionate with the time worked⁹⁰.

⁸⁷ The employees are hired through temporary work agencies through contracts defined as labour contracts in the following EU Member States: Belgium, the Czech Republic, Estonia, Finland, Ireland, Luxembourg, Romania and Slovenia.

⁸⁸ Lee, S.; McCann, D.; Messenger, J.C. 2007. *Working Time Around the World: Trends in working hours, laws, and policies in a global comparative perspective* (London and Geneva, Routledge and ILO), 2007, p. 99.

⁸⁹ Thus : the right to equal opportunities and treatment, right to dignity at work, right to labour safety and health, right to access to professional training, right to information and consultation, right to take part in identification and improvement of working conditions and environment, right to protection in case of dismissal, right to collective bargaining, right to take part in collective actions, right to set up or join a union etc.

⁹⁰ Right to salary and other benefits. Right to holidays is no longer part of this category. Following the abrogation of art. 140 paragraph 4 in the Labour Code, through Governmental Emergency Ordinance no. 65/2005, the duration of the holidays for part-time employees is not longer proportionate with the worked hours but they are entitled to full holidays.

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In terms of trends and possibilities to render the working relations flexible, the provision in art. 104 in the Labour Code must be emphasized as it forces the employer, to the extent to which this is feasible, to consider the employees' request to transfer from full-time to part-time, or from part-time to full time, or to increase their working hours, if any opportunity⁹¹.

This provision complies with art. 18 in the Recommendation of the International Labour Organisation no 182/1994 regarding part-time jobs. To note that the provisions of the Recommendation go beyond the Romanian law and impose the employer to accept the employee's request to be transferred from full time to part-time, if the request has a serious justification⁹².

F. Home work and tele-work labour contracts

According to art. 105 in the Labour Code, homework employees are those employees who meet the specific requirements for the positions held. In order to fulfil their tasks, homework employees establish themselves their working hours.

What is particular about this labour contract is the *workplace*, which is not the premises of the employer but of the employee. Unlike Romanian regulations, the Convention of the International Labour Organisation no 177/1996⁹³ regarding the homework employees stipulates that the workplace can be not only the employee's premises but also any other workplace chosen by the employee. Hence, the Romanian regulations stipulating only the employee's premises as workplace seems more restrictive.

Under all labour contracts, the employer is entitled to check his employees' activity. This right to check implies regular onsite visits. The employee who does not allow the access of the employer (or his delegate to perform the check as established) shall be considered in breach of professional conduct.

Since all the rules of the individual labour contract are also applicable to the homework contracts, the working hours cannot differ from the typical labour contract that is 8 hours per day and 40 hours per week.

⁹¹ This idea is reiterated in the national collective labour contract providing in art. 11 paragraph 2 that, upon request, the part-time employees can be hired full time if there are vacancies and if they meet the requirements to fill in these positions.

⁹² The reasons implied by the Recommendation are: pregnancy or the need to look after a baby or a disable or sick member of the family or return to full-time work.

⁹³ Ratification of Convention no 177/1996 was recommended to EU Member States by the European Commission in 1998.

Nevertheless, the monitoring and the accurate delimitation of working hours raise some special problems.

That is why the lawmakers in various countries want to make particular laws in this respect.

For instance, in Hungary, standard working hours of an employee with homework labour contract are defined against the working hours of a comparable employee to see what is the time needed to perform those tasks so that the duration of a standard working day shall not be exceeded⁹⁴.

Also in our law system, by laws or collective bargaining labour contracts, we should compare the activity of the homework employee to that of a comparable employee; art. 101 refers to part-time labour contract.

Tele-work labour contract is a flexible form of activity, which means that an employee performs his task through IT technologies⁹⁵.

This is not a labour contract as such but an atypical way to organize work. Tele-work is not regulated by domestic laws yet; a European framework agreement on tele-work has been concluded between entrepreneurs' associations and unions with European representation.

G. On call labour contract

One contract spread in other countries is the contract called *on call* (upon request work), which is a high flexibility type of labour contract, not yet regulated by the Romanian law.

The presence of the employee hired under this contract is not needed every day in the company. It may not even be needed at all. However, the employer takes into account the potential possibility that the presence of that expert may be needed at a certain moment. Against this uncertainty typical of the market economy, the employer wants to protect oneself and hires an employee to turn to in case of need.

We can speak of two kinds of working time:

a) Time when the employee must be present in the company. For this time, some countries have stipulated a minimum (for instance in Germany, if the contract does not stipulate otherwise, the minimum is 10 hours per week) whereas in other countries, there is no minimal time

⁹⁴ Law no 118/2003 for modification of the Labour Code in 1992, Magyar Közlöny, 2003-12-22, No. 152, pp. 12132-12134.

⁹⁵ See also B. Vartolomei, *Telework – a new form of labour structuring*, in „Dreptul” no 2/2008, p. 62 – 69; O. Ținca, *Preoccupations to enhance social dialogue in the European Union. Framework agreement of tele-work*, in „Trade Law Magazine” no 5/2003, p. 64 - 72.

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stipulated. In this latter case, the labour contract is called „zero hours contract” (for instance in the Netherlands⁹⁶).

Regarding the maximal time that the employee can be asked to spend in the company, it is generally accepted that it cannot be as long as the duration of standard working day but less. If the employee were asked to spend 8 hours per day in the company, we would not have an “on-call” contract but a typical labour contract, including also overtime⁹⁷;

b) Time when the employee comes to the company to perform the work, upon request of the employer, and prior notification.

These hours are worked not as “overtime” as often happens in the case of extra hours), but as a result of “intervention”, by coming to work from home.

In some countries⁹⁸, the law stipulates a maximum of interventions/requests (not hours) –: one per month, without consent of the employee, and a minimum, (one per week) with the consent of the employee which means a prior contractual agreement in place, not consent of the employee for each request of intervention.

In other countries, the law stipulates not the maximum of requests but the minimum duration of a request. In Germany and in the Netherlands, if not stipulated otherwise in the contract, the law assumes that a request shall last for at least 3 consecutive hours⁹⁹.

Recently regulated in Italy (2003), the on-call contract has two versions: including the obligation of the employee to respond to all requests of the employer and including his right to decline the request with justification.

Like employees in temporary suspension of employment, the employee hired under an on-call type contract loses one’s employee status and the right to a minimal remuneration also during the time when his/her presence is not needed.

Regarding payments, in some countries, these are given proportionate with the duration of the intervention (similar to extra hours).

⁹⁶ In this case it would be possible (at least theoretically) that the employee may not work at all during the duration of the contract if his work is not needed.

⁹⁷ The Spanish law, for instance, clearly stipulates that *on call* employees can only be part-time employees.

⁹⁸ Like Lithuania.

⁹⁹ The regulations regarding the minimum duration of an intervention is justified by the remuneration for the *on call* employee who is remunerated per hour of intervention without taking into account the time needed to travel from and to his home. Even if the intervention lasted less time, the *on call* employee shall be entitled to remuneration for at least 3 hours.

Basically, the salary of this employee can vary from the minimum salary (ensured, for the case when there are no interventions) to a quite significant salary, as a result of the total number of interventions.

The request to come to work shall be communicated to the employee some time before; this time is clearly stipulated in collective and individual labour contracts or defined by law. For instance in Germany, this request shall be communicated to the employee at least 4 days before and it shall include the number of hours that the employee shall be asked to work; in Spain, the notification shall be done at least 7 days before. This early notification is justified by that fact that very often these employees work at the same time under several *on call* contracts for several employers. Since they do not work on a regular basis, they shall be early notified to enable them organize their working time.

The *on call* contract shall not be taken for labour contract with customised working hours, regulated also in our law (art. 115 in the Labour Code). In principle, in the case of the labour contract with customised working hours:

- The variable working time does not affect the daily working time;
- The employee chooses his arrival and departure times.

On the contrary, in the case of an on-call contract:

- The daily /weekly working time depends on the requests of the employer;
- The employer decides if the presence of the employee is needed at work and notifies him to come to work.

To note that in both cases, the provisions of Directive 2003/88/CE regarding the structuring of the working time shall be complied with.

H. Job-sharing contract

In the case of part-time contract, the working time is fractioned, two or more employees work their fraction of the working time. The working time of an employee does not depend on the working time of the other employees.

The job-sharing contract modifies these rules.

It is currently not acceptable in the Romanian law but it has been recognized by other law systems; the job-sharing contract is an agreement based on which the employees no longer work their fraction of the working time but together for the working time corresponding to the respective job.

In Germany, the job-sharing contract is regulated by the Law on part-time contracts and contracts with determined duration. The job-sharing contract is defined as the contract concluded between the employer, on the

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one hand, and two or more employees on the other hand, by which the employees commit themselves to share the working time corresponding to a job.

This job-sharing contract is also regulated in the Italian law (Decree 276/2003). Although not explicitly regulated, versions of this contract can be found in Spain and Austria.

There are practically two contractual agreements: one between employees, on the one hand, and employer, on the other hand¹⁰⁰ and an agreement between employees regarding the sharing of the working time. This latter agreement imposes no requirements on the form.

Failure of the employees to reach an agreement shall incur their liability in relation to the employer. In other words, by concluding this labour contract, the employees commit themselves to reach an agreement between them regarding the time-sharing.

The employees are entitled to decide freely the way to share time with no intervention of the employer.

However, if there is lack of agreement between employees, the employer has the right, in principle, to decide how to share the working time. If the employer did not have this right, the working relation would be based on a civil contract not on a labour contract because the employer would not have the managerial and supervision prerogatives.

In case of disability of one employee, many law systems stipulate that the other employee shall replace him¹⁰¹.

The innovating contents if this contract can be compared to the property in *time-sharing*. However, the obligation to perform the work

¹⁰⁰ Which, in law systems recognizing the validity of this legal constructions, is actually an individual labour contract and is subject to all regulations governing this kind of contract

¹⁰¹ The German law regarding part-time labour contracts and labour contracts with determined duration stipulates that the other employees shall replace him but only according to their agreement. Such obligation shall be preserved even if there is no agreement between them, in case of urgent operational reasons which impose the presence of the employee at the workplace.

Austria does not accept the obligation to replace the employee with labour disability, according to the interpretation of art. 1153 ABGB (*Österreich Allgemeines Bürgerliches Gesetzbuch*) stipulating that the employee shall do the work himself. It is considered that the employee with labour disability shall not be forced to ensure a replacement and shall not be allowed to. Such rule is considered as applicable also for job-sharing labour contracts. See Rudolf Strasser, *International Encyclopedia for Labour Law and Industrial Relations*, 1992, p. 61, point 140.

In Italy, the other employee hired in *job sharing* shall replace the employee with temporary labour disability, without obligation to have a prior agreement between them in this respect.

remains personal and cannot be transferred to another employee; only the working time is shared.

I. Disadvantages of atypical labour contracts

The great variety of labour contracts and to extent to which, once allowed by legislation, they are used by the parties are indicators of flexibility of working relations¹⁰²; the trend in the Romanian legislation is to increase diversity of contracts on which subordinated work is based. Enforcement of new flexicurity policies implies flexibilization of contractual relations, adapting of the contractual arrangements to the practical needs of the parties, without forcing them to place their relations in the Procrustean bed of the individual labour contract with non-determined duration and full-time labour contract.

However, flexibilization of the contractual relations incurred risks. The atypical labour contracts have some features that cannot be ignored:

- They can sometimes generate discrimination of the employee who works under this kind of contract as against the typical employee. For this reason, the European documents clearly prohibit discrimination between these employees and employees who work under typical labour contracts. That is why later on, the concept of “compatible employee” was created and taken over by national legislations;

- These contracts can raise difficulties in exercising collective rights. The employee working under an atypical contract (especially, homework employees) has fewer chances to integrate within a team, a union or to take part in collective bargaining, which gives force to the claims of the employees. The working relations are therefore fragmented; the employer negotiates individually with each employee and “**niche contracts**” result, which may correspond indeed to particular interests of each employee, thus reflecting the flexibilization of working relations; however, this can deprive the employee of theoretical and practical exercising of their collective rights;

- Work done under such contracts that do not imply the presence of the employee on the premises of the company (like home work labour contract) can pose risks related to labour health and safety;

- The effective duration of the work is sometimes impossible to establish;

- Regulating the atypical labour contracts can have consequences regarding some rights of the parties that will have to be solved by

¹⁰² To see how this indicator is used, see S. Cazes, A. Nesporova, *loc.cit.*

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derogations (for instance, the holiday's right). In addition, such contracts raise sometimes the issue of proportionality of rights¹⁰³;

- The atypical labour contracts are generally perceived as more beneficial for the employer than for the employee. Especially at times with job deficit, there is a risk that the option of atypical work will belong to the employer and the employee will only accept.

3.4. Flexibilization of working time (*flexitime*)

The working time of 8 hours per day, with fixed working hours, corresponds to the interests of many categories of employers and employees but does not meet the needs of *all* the parties in the working relations. The fluctuating needs of production, from the point of view of the employer, but also the wish to harmonize professional objectives and private life, from the point of view of the employee, make sometimes the parties identify alternative, flexible working time solutions.

A. Working time and extra hours

The working time is the time during which the employee does one's work, is available to the employer and performs one's tasks and assignments in compliance with one's individual labour contract, collective bargaining labour contract and / or labour legislation.

In the Romanian law, the working time of full-time employees is 8 hours per day and 40 hours per week. Maximum extra 8 hours per week can be added, in compliance with Directive 2003/88/CE¹⁰⁴ concerning aspects of the organisation of the working time.

The maximum duration of 48 hours can be exceeded under exceptional circumstances, unless the average of working hours, calculated for 3 calendar months, does not exceed 48 hours per week. In case of some business sectors, companies or professions established under the national collective bargaining labour contract, longer duration than 3 months, but not

¹⁰³ For instance, in the Romanian law, holidays were originally given proportionately with the time worked, in case of part-time labour contracts; later on, full holidays were given (only the benefit remained proportionate).

¹⁰⁴ The Directive regulates the excessive extra hours in the EU but which is actually an issue for employee around the world. For instance, a study conducted in 2007 by the International Labour Organisation concluded that over 1/5 of the labour force around the world, that is 614 million employees work (much more) over 48 hours per week (*Working time around the world*, www.ilo.ru/news/200706/WorkingTimeProof.pdf).

exceeding 12 months, can be negotiated under the collective bargaining labour contract for the respective business¹⁰⁵.

In regulating the aspect of multiple positions, art. 35¹⁰⁶ in the Labour Code does not restrict the possibility of an employee to conclude several labour contracts at the same time. In a regrettable way however, there is no requirement that the total of hours worked should not exceed the maximum duration of working time.

A particular case to note. According to art. 4 paragraph 2 in the Governmental Decision no 38/2008 concerning the organisation of the working time in case of mobile employees who provide road transportation services¹⁰⁷, „in case of mobile employees who work for several employers, the working time is the total amount of hours worked by that person for all employers. The employer shall ask the employee to submit a written record of the time worked for other employers. The mobile employee shall provide this information in writing”. Although it may have limited applicability to the category of employees covered by the act, this provision may mean certain openness provided by the lawmaker towards a future possibility to limit the working time not only under a particular contract but also under all contracts in which the employee is a party. The spirit of Directive 2003/88/CE would be thus reflected.

In the Romanian law, overtime cannot be performed without the employee's consent, with two exceptions:

- Force majeure situations, and
- Urgent works meant to prevent or remove consequences of an accident.

In many EU law systems, the employer can impose overtime without the employee's consent. There are several solutions. Some law systems make a difference between extra hours imposed by the employer (with a certain restriction) and extra hours worked with the employee's consent (with less restriction)¹⁰⁸. In law systems where the employer cannot impose

¹⁰⁵ Indeed, the collective bargaining labour contract for 2007 – 2010 includes, in annex 6, the list of businesses that can negotiate longer periods of time.

¹⁰⁶ According to art. 36 paragraph 1: „Any employee can work on multiple positions, based on individual labour contracts and will have the salary corresponding to each position”.

¹⁰⁷ Published in "Official Gazette of Romania", part I, no 49 of 22 January 2008.

¹⁰⁸ For example, in the Czech Republic.

In other law systems, like Italy, there is a difference between:

- additional work (work done beyond the legal limit) and
- overtime work (work done beyond the number of hours negotiated under the individual or collective labour contract).

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overtime, the exceptional situations where employers can ask for overtime are more numerous than in our Code.

In Lithuania, if the collective bargaining labour contracts stipulate that the employer can ask for overtime, no consent of the employees will be asked for. In Portugal, it is not the employer who must justify why he asks for overtime but the employee must justify his refuse. In Great Britain, the request to work overtime is compulsory and the employee can be sanctioned.

Regarding the flexicurity of working time and flexibilization of working time, the situations when the employee can be asked to work overtime are not restrictively stipulated in the Romanian law. We think that a broader range of exceptional situations when the employee can be asked, unilaterally, to work overtime can be included. For instance, to stipulate the possibility of the employer to impose unilaterally to the employee to work overtime, with the corresponding benefit and below the maximum of 8 extra hours per week, not only in the cases stipulated in art. 117 paragraph 2, but also in exceptional urgent cases.

According to art. 119 paragraph 1 in the Labour Code, overtime work shall be compensated by paid free hours within the next 30 days after the work was done. Only if compensation through paid free hours is not possible, art. 120 paragraph 1 allows payment for the extra work by adding a percentage to the salary corresponding to the number of hours worked.

To note that, in practice, in most cases, no paid free hours are given. Automatically, overtime worked is compensated by adding a percentage to the salary. In the long term, this can affect the employee's health.

On the other hand, the 30 days deadline stipulated in art. 119 paragraph 1 is too short to ensure the employer the real possibility to compensate the overtime with free time. In addition, the 30 days deadline is stipulated to be in the interest of the employee; hence, the employee cannot accept a later compensation with the corresponding free time.

Two difficulties are encountered when applying the two laws:

- A too vague notion in art. 120 paragraph 1: if compensation „is not possible”. It would be more useful to explain the objective, concrete and tangible reasons, because of which the extra hours were not compensated with the corresponding free time;

- A too short time of 30 days only for such compensations; thus, no flexibilization of working relations is achieved and no interests of any party are fulfilled. The employee may need a corresponding free time compensation not at the moment but in the future, (when he may have some

family problems); the employer may as well prefer a future compensation in nature, when the production peak is over¹⁰⁹.

B. Periods of availability to the employer

Art. 108 in the Labour Code, in its original form, stipulated that the working time is the time the employee uses to fulfil one's tasks. Through Governmental Emergency Ordinance no 55/2006, art. 108 was amended and the definition extended: the working time is the period of time during which the employee does one's job, is available to the employer and fulfils one's tasks and assignments, under the individual labour contract, collective bargaining labour contract and/or labour legislation. This amendment was adopted to translate correctly the provisions of Directive no 2003/88/CE.

By using the phrase „available to the employer”, it is suggested that working time is also the periods of time when the employee does not carry out the specific operations for his job but waits for goods, customers, patients, beneficiaries etc.

However, not any period of time when the employee is available to the employer can be working time¹¹⁰. For instance, this concept is mentioned also in art. 53 in the Labour Code¹¹¹, regarding employees in

¹⁰⁹ Theoretically at the moment, the question is if a „deposit” of extra hours worked shouldn't be allowed. The German law stipulates that, for instance, when the labour contract ends, the employee could take with him to the new employer this „account of extra hours”. Although the work is done individually, the account of extra hours can become a separate asset in exchange of which the employee can get compensation with free time, whenever he may want. See Preis, *Innovative Arbeitsformen*, PhD Otto Schmidt Publishing House, 2005, cited in European Labour Law Network, *cited work*, page. 57, ref. 25.

¹¹⁰ In European jurisprudence, the reference example in this case is SIMAP (Sindicato de Médicos de Asistencia Pública) filed with the Court of Justice of the European Communities by a union of Spanish doctors. The Court decided that the doctors who make first aid teams, whose presence at the premises of the medical unit is not compulsory but they are available to the employer and they can be located at any time, can organize their time with few restrictions and can spend time for their private matters. Consequently, that time cannot be considered as working time.

On the other hand, doctors whose presence at the premises of the medical unit is compulsory spend their working time even when they wait and when they have a rest in the areas equipped for this purpose. See the decision [C-303/98](#), www.curia.europa.eu. In this respect, also C-151/02, Jaeger Case, *idem*.

¹¹¹ Art. 53: „(1) During temporary suspension of activity of the employer, the employees shall receive an allowance paid from the salary budget which cannot be less than 75% of the standard salary corresponding to the job.

(2) During temporary suspension of activity stipulated under paragraph (1), employees shall be available to the employer, and the employer shall always have the chance to order resuming of activity”.

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temporary suspension of activity who are available to their employer¹¹². This period of time is not included in the working time; hence, the amount of money owed to employees (75 % of the standard salary corresponding to the job) is not considered a salary but an allowance.

Relevant in defining this time as working time or rest time is not only the obligation of the employee to remain available but also:

- The place where this obligation is performed. If the employee is available to the employer at the premises of the company, the time is susceptible to be included in the working time. If the employee is available to the employer outside the premises, at one's place, for instance, the time may be considered as rest time;

- The extent to which the employee has the freedom to organize his working time and the extent to which he is separated from his family and social environment.

The customized working hours, the absence of fixed beginning and ending hours for a working day, the possibility to work at home and according to one's own working hours– are indicators of flexibilization of working time according to the interests of the employee or employer.

To note once again that abuse may potentially arise, mainly because of lack of mechanism to monitor overtime.

Restriction upon extra hours is imposed through EU Directive; in addition, it is of interest for the entire society because of the impact upon the health of employees. Consequently, any flexibilization of the working time shall be done by taking into account this restriction, which should be applied not only to one labour contract but also to all labour contracts so that the employee could not work for more than 48 hours per week, including extra hours, irrespective of the number of labour contracts one has.

Particularities of the flexicurity policies in the new Member States are historical; they originate from certain economic disadvantages, they depend on the kind of social dialogue put in place and often on the labour force itself.

As previously mentioned, financially speaking, flexibility (simplification of hiring and dismissing employees), and flexibilization of the working time or broader range of contractual arrangements, for instance) are obviously easier to implement than security, which implies significant funds (for professional training and conversion, financial support of job

¹¹² „Being available to the employer”, that we are discussing here shall not be taken for „making available to” the user of a temporary employee, a notion used by art. 87 and the following one in the Labour Code.

seekers etc.). Hence, the fear that implementation of this concept in the new member states may trigger rather a flexibilization, which is not compensated by corresponding measures to ensure labour security for employees.

Through its own experience, Romania makes its contribution to a broader range of European labour regulations. Inevitably, Romanian regulations will influence and will be influenced. One fundamental trend that Romania's accession to the EU seemed to have initiated is flexibilization of regulations governing individual labour relations and collective labour relations, a re-sizing of the individual and collective negotiation limits, which will bring benefits to both contracting parties only if a certain degree of labour security is ensured.

Chapter 4. THE POLITICAL ECONOMY OF FLEXI(SE)CURITY POLICIES IN ROMANIA

author: PhD C. Ghinǎraru ¹¹³

4.1. Flexibility and Security – from economic theory to social practice

In the book economists hold as their most endearing (no matter how criticized economists may be at the moment), Adam Smith said that, “he who does the same thing for years on end with no changes, may reach a level of stupidity never occurred before with human beings”. *Avant la lettre*, this is only the Popperian view upon becoming an animal, upon degradation of the human being when remained within rigid patterns because either one cannot escape being therefore a prisoner, or one does not want to escape. What seems however, strange, although it may not be because the Smithsonian work still hides secrets that reveal themselves as we progress in studying economics, is that this paragraph is also present in *The Wealth of Nations*, after Smith highly praises, in a paragraph of the book, the social division of work, therefore precisely what means a clear, rigorous and therefore rigid specialization.

This shouldn't surprise us; Smith was an optimistic and although he couldn't clarify all economic issues (which is anyway impossible since economics is the intricate human life itself) he had the intuition that the “*spiritus animalicus*” mentioned after 100 years by Keynes of what he defined as “individual interest” is a continuous movement of the individuals, a continuous migration from one sector of the social division of labour to another- in other words, from one specialization to another. The individual, the free human being, is in oneself flexible; one is in pursuit of flexibility, one adapts oneself, innovates, creates all the time and thus avoids stupidity. Only when deprived of freedom, when secluded in utopias (to come back to Popper) one falls irreversibly in stupidity.

Taken this into account, flexibility is therefore an inherent feature of labour demand and supply. Both being driven by individual interest, they tend to become flexible in order to meet each other as none of them can survive independently.

¹¹³ Dr. Catalin Ghinararu brings his most sincere thanks to Dr.jr. Georgeta Modiga for her contribution to the elaboration of this chapter.

This intrinsic flexibility allows eventually the flexibility of prices on the labour market and the transmission information needed to take decisions either to the demand players or to supply players. If the two components were rigid, if they didn't generate information or didn't try to obtain information allowing them to be at least one little step in front of the others, in other words, if the hypothesis of Efficient Market were in place (translation in economic language of the Platonic fortress) therefore, if all players were equal, the market would no longer move, prices would no longer vary.

At that moment, although it may seem at first sight that this is the social desirability, a concept elaborated later on which is now only introduced here discretely, the fall into stupidity would occur. Why? Because all information being equal and access being equal, all of us knowing the same things (doesn't it seem to us Romanians, a *deja vu*??) no stimulation for flexibility would be left. Smith's praising of social division of labour may become anger. It may appear not as social division of labour, that is what it creates – to use a phrase by Shiller though initially coined by Keynes, the one accused of crypto-socialism - "genius of capitalism", but its opposite, rigid specialization, structuring of economy and society in small compartments communicating among them through a corridor, like the semi-detached flats, and eventually causing the fall into stupidity.

Consequently, the social division of labour itself creates the clear requirements for flexibility; rigid specialization kills flexibility and ensures individuals and companies a false security.

The dichotomy between flexibility and security and the effort to combine them in what today is flexicurity or flexi-security (irrespective of its spelling, it is the same) appeared from the 20th century exceptionalism which unfortunately was stronger in Eastern Europe – we have no choice now and we must become EURO-CENTRISTS, although it looks like it is already approaching Asia – therefore, present in Romania as well; this is our topic. Before the 20th century, there had been no such talk. Only when the World Wars and big autarchic organisations raised the issue of rigid specialization, which is the essence of *Kriegs-Kapitalismus*, the idea of rigidization appeared. A dreadful concept appeared and stipulated that one should stay at one's place and do what is told from birth to death if possible (the famous phrase "*from cradle to grave*"). In this parenthesis of history which lasted for seventy years, and in which we, the Romanians, found our innermost place, we must look for the secret of the passion for rigidity and hostility towards flexibility.

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Open economies are therefore flexible because they are made of individuals that try to manage on markets with inefficient information or imperfectly efficient which cause both individuals and companies to make efforts to impose efficiency and to get a relative security through permanent flexibilization; under these circumstances, FLEXICURITY is a fact incorporated into economic realities, a truism.

Closed economies are on the other hand what we call – paradoxically – efficient information economies. All players have or are given the same information. No one has reasons to be flexible; no one needs to try flexibilization because everything seems perfect. This illusion of perfection disappears quickly. The sheer lack of that permanent drive towards efficiency that characterizes “imperfect markets”, makes them fall into Smith’s stupidity. That is, dries out economic and society mechanisms, it stiffens them and dissolves them. It is true that on inefficient, therefore free markets, dissolution can appear, in the Schumpeterian sense that is involving actually re-solution in the way deflation is followed by reflation, in other words, from scrapes, something new is created.

On perfect markets however, dissolution means disappearance. Why does this happen? Because on the apparently inefficient markets, each individual is used to making the effort towards efficientization and when it comes to dissolution, individuals understand they must do something to render efficient, therefore to reflate, because dissolution goes hand in hand with deflation (which is normal; the price is basic information which, through its deflatory movement, warns about dissolution which makes all the involved parties look desperately for reflation or re-solution). On the apparently efficient markets, or less closed, dissolution cannot be stopped because no one understands what happens. Everybody has the same information therefore the same irrepressible impression of efficiency (let us remember the illusion of the Romanians at the end of the ’80 that we had a great industrial sector which however didn’t manage to ensure our daily meals). Consequently, no one can do anything. The economic body dissolves and nothing can be created to replace it, as the players on the market have no longer the instinct of reflation; they fell into stupidity because they had done the same thing for too long, they had spent too long in security, sometimes absolute security.

The purpose of this somehow theoretical undertaking – maybe it is better to analyse theoretically during crises – as Lord Keynes did himself, without taking over the Malthusian pessimism or the illusion that had trapped our Manoilescu – is to emphasize time zero of the Romanian macro-

economy of flexicurity that happened twenty years ago when Communism collapsed.

At that moment, Romanian economy and society were entirely rigid and that is why they dissolved. Consequently, what we have done so far has been an effort of flexibilization. This flexibilization started from extreme rigidity that imploded and generated absolute flexibility (so called “chaotic transition” – opposite of “managed or negotiated transition” -the classical example is Poland; that is why Poland is the Eastern country behaving best under the current global economic depression!).

In understanding macro-economy and what we should call “political economy of flexicurity” –let us introduce this concept to work with - we must start from time zero which should be understood as a time placed in an “economic a-spatiality”. In other words, twenty years ago, Romanian economy, entirely rigid after forty years of centralized planning, had to start over again from zero, with actors unable to impose efficiency because they had lived in the illusion of absolute efficiency or total security.

The implosion of total security generated total flexibility or apparent chaos, which perfectly justified the Western word describing the Romanian transition and the transition of the former USSR - chaotic transition.

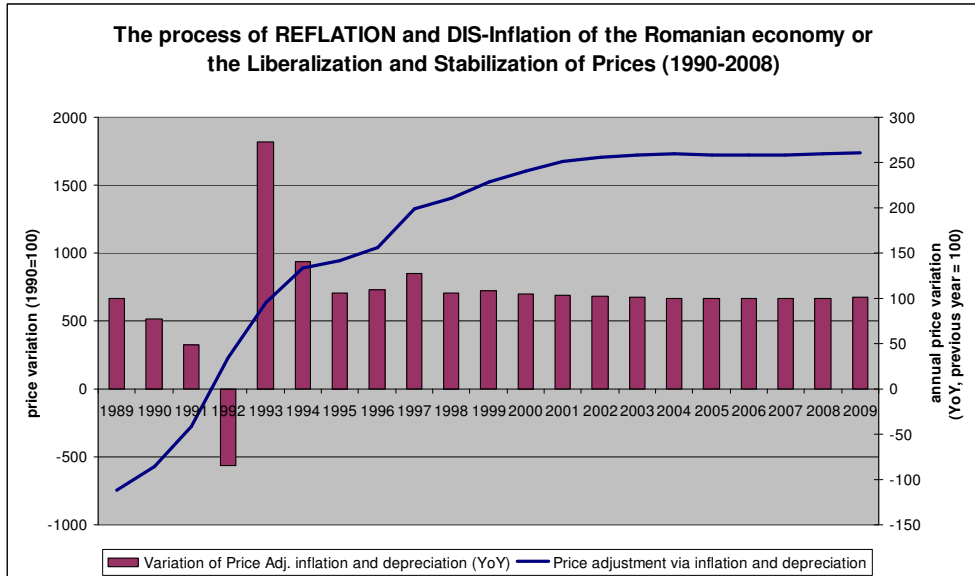
4.2. Disequilibrium and the Regaining of Flexibility-Security equilibrium in a transition economy

A book that was very successful when published and we must keep it in mind together with the author - Jean Francois Revel and his “*Le Regain Democratique*” (translated into Romanian as “Revirimentul Democratiei”/ Revival of Democracy) – said that “... a country escaping Communism will not be at the level it went into Communism but much lower if not...nowhere”.

It is indeed so. Romania, as many Eastern countries, was nowhere twenty years ago. From that nowhere, it had to go somewhere and that somewhere suitable to us was the EU that is where we are now. This is how we may need to measure our progress. Of course, from nowhere, you can go anywhere because you don’t know where you are anyway (like Odysseus, if Nobody was striking Polifemus, how could Polifemus protect himself from Nobody??). Hence, the chaotic stage that followed; hence, the utmost uncertainty and disorientation of the political economy approach; hence, incoherence in the macro-economic and on the labour market.

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Chart no. 1



Practically, a form of anarchical social dialogue appeared out of that nowhere, a monologue of pressure and counter-pressure which was typical of the first half of the 90s and explains, among other things, why Progress in Transition, a variable which we are going to use further on, was present at the beginning of the *Transition from Plan to Market* (a unique time in the universal economic history to which we are too close, as Tchou En Lai was saying, to pass judgements in a relevant, calm, inconsistent and conclusive way) and did not yield the expected outcome.

We would say it could not yield results. Why? The answer now is apparently simple. The market actors were suddenly overwhelmed with information and at the same time, looking for information, without knowing how to look for this information on the market; most of it is reflected in prices. Hence, the anarchical process to re-arrange or deregulate prices, felt by individuals and companies as hyperinflation but which actually was a CHAOTIC REFLATION of economy after the deep deflation of the last ten years of planned economy. The chaos of reflation explains the aberrant behaviours of economic actors who could only do total flexibilization in order to enter the entirely inefficient market where market information was only fragmented, it was extremely volatile and extremely depreciated (practical reflection in the depreciation of national currency).

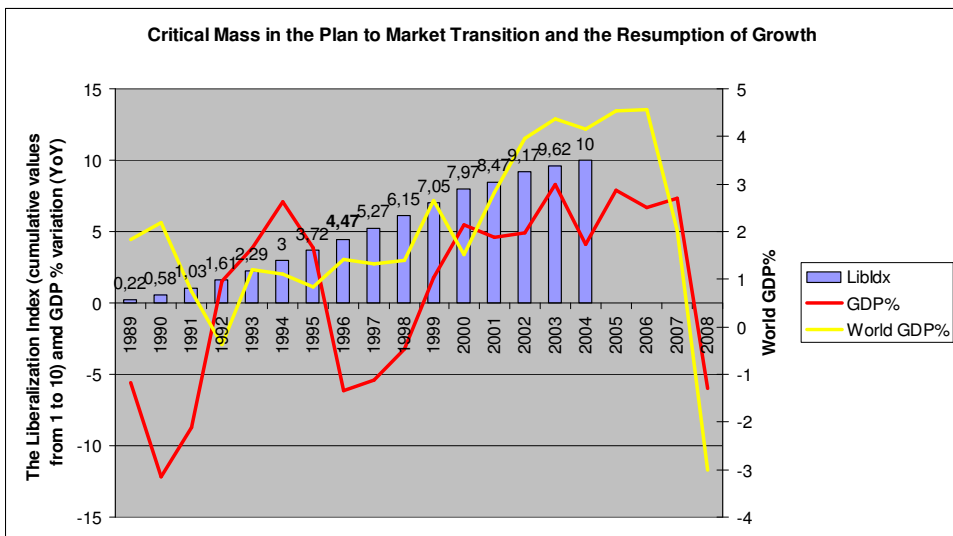
In this context, social dialogue, even if intended to keep a model of Security for the employee, practically only could deepen Insecurity by

creating various groups of interests exploiting informational chaos of islands of privileges that distorted further more the market. It did not matter even that such islets were getting submerged as soon as they were emerging on the surface, for the process kept unfolding. Practically, an extremely volatile situation was created, with anarchical social dialogue, put to pressure and whose final outcome was exaggerated flexibility of the market. This was the only time when the Romanian market had utmost Flexibility and least Security, when employees could be hired and dismissed “at will”, when unemployment benefits higher than salaries could be given, when pensions of unskilled employees were equal to those of extraordinary employees, and when salaries, as price of labour, could vary depending on the information available directly to the parties in the working relations.

Chaotic reflation and total flexibilization as well as relative insecurity induced in society can be explained precisely by the previous absolute security. This period of time is a strong argument for the relative balance between Flexibility and Security; both extremes are harmful and potentially materialising the risk of dissolution.

However, chaotic reflation had a positive effect as well. It completely dissolved the structure of the old planned economy focused, according to the Leninist model on heavy industry sectors or, in other words, on an extremely autarchic military and industrial compound. The chaos in the social dialogue caused the extreme informational asymmetry that favoured the radical reform at the end of the '90s.

Chart No. 2



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Studies conducted on the dynamics of transition from Plan to Market, including studies conducted by the author of this book, showed (post-factum indeed but nobody, not even Sir Winston Churchill could foresee that “a barbarism like Communism” would ever rule over a part of the Europe which is the cradle of civilization) that transition from Plan to Market would take about fifteen years, irrespective of the path chosen (linear or “stop and go”/interrupted and resumed). This is the time an economy needs to get rid of the wastes of the centralized planned economy and to rebuild its competitive mechanisms to a minimal level (this process is accompanied partially by stages of economic decline, partially by stages of economic growth, but these have no connection to the economic cycles as they take place in *effective capitalist economies*, if we are allowed to put it so bluntly).

What is different here and particular of various approaches, and has impact upon the balance between Flexibility and Security and upon the role the social dialogue has (or better to say, the social partners) is the moment when the Critical Mass of Transition from Plan to Market is reached, or the moment when transition, which is a radical change, starts to bring tangible benefits to a large, significant mass of companies and households. It is also important the time between the beginning of transition, the Revelian “nulle part” and its end (although nobody analysed this moment, wrongly assimilated by many with the conventional moment when the Eastern countries joined the EU).

If this moment comes quickly after the start, the benefits of transition will become soon obvious (Poland’s case, actually unique); however, there is a risk that this apparently steadiness of economic reflation may hide certain imperfections, bring a false Security and thus trigger a “critical post-mass recession” (this is a purely conventional word that has no connection to recession as stage of economic cycle). The time since the critical mass is reached until the end of transition is somehow longer (approx 10 yeas) but it helps to reach a balance between Flexibility and Security, very useful for the moment (difficult to identify as it can be hidden behind more visible phenomena) when transition ends. From this moment on, cyclicity effectively starts.

If it happens the other way round - Romania’s case – the moment of the critical mass appears later, after a huge chaotic (apparent) hyperinflation which affects the balance Flexibility-Security of the labour market by practically turning extreme security into extreme flexibility (hence the false perception of the Romanian labour force after 1999-2000 and especially after 2003 when the new Labour Code was adopted). Thus, the radical

reform is easier and stronger; the former economic structure is dismantled. This approach, from the moment when the critical mass is achieved until the moment when transition is completed, makes the road shorter and incurs an external apparent accelerated economic growth, which is only the final part of economic reflation. However, the almost complete dissolution proceeding the moment when the critical mass is achieved causes incomplete balance in society at the final moment of transition, that is when there is convergence with the global economic flows and with the cyclicity typical of the capitalist economy. The cost of such an approach is obviously higher for the individual and society in general and it is represented by the fact that the values of a so-called relatively inefficient market is not internalized; to keep in mind that the individual effort (generally speaking – it can be an individual or a company or country-nation/national economy) is fundamental to achieve goals, therefore in fulfilling individual interest, as unique drive of progress. That is why the balance Flexibility-Security is more difficult to reach.

The cost of dismantling mechanisms of social dialogue is to be added to this cost. Because of the extension of chaotic reflation, followed by radical reform, social partners only exist theoretically at the end of the reflation of transition. The repeated shocks upon the structure of society make it lose its capacity to react. Although institutional arrangements seem to lead to a certain balance, this is felt by society like imposed again, accepted with indifference as long as the trend of the cycle is ascending (when the institutional is carried by the economic) and contested as soon as the trend of the cycle becomes descending, which is actually normal. In other words, when the institutional must carry the economic, when the state must play its role of “lender of last resort”, it cannot do it – hence the strong contesting, the inability to react coherently and again (although in another form but felt and perceived strongly by the actors of the market) the risk of dissolution.

From here, we can differentiate three stages in the evolution of social dialogue in Romania over the last twenty years, therefore in the evolution of the approaches regarding the balance Flexibility and Security:

- First stage – chaotic dialogue in which the party representing the labour supply took over the leading role, thus taking advantage of the practical absence of the party representing the demand and of the confusion of the referee that is of the public power; this stage ended in 1996;

- Second stage- dialogue structured by needs, which underlie the radical reform at the end of the '90s and beginning of this millennium and was completed by the adoption of the new Labour Code. The centre of

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power moved, “shifted”, as Anglo-Saxons say, from the supply towards the demand. However, given the late achievement of the moment of the critical mass and the practical dissolution of the economic structure, at the peak of this stage, the actors of the demand are not entirely structured yet which allows the actors of the supply, although deprived of power, to impose their point of view (see the contents of the Labour Code);

- Third stage in which we are currently (2009) – social dialogue is practically de-structured, although formally, it has a form more articulated than ever since the beginning of the road towards normality. The demand is insufficiently structured but it has become vocal; supply is fragmented and practically, no longer active but reactive; against this background, the public power acts in a pro-cyclic way. In other words, instead of attenuating the gradients of the cycle to create conditions for a balance Flexibility-Security, it deepens the gradients by flexibilization when it is necessary (during growth when the market automatically flexibilizes by surplus – “the plenty”) and by reducing Security during recession (exactly when the market cannot offer Security any longer because of shortages– “the scarcity”).

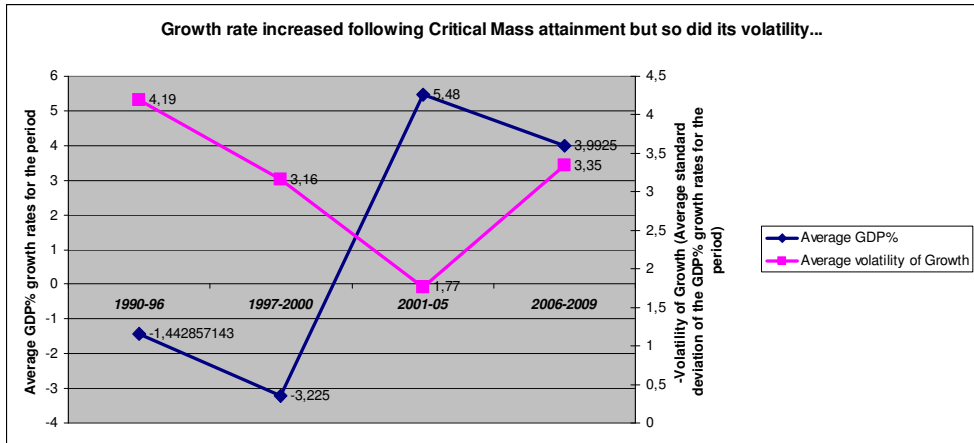
This is the most perverse heritage possible (economically speaking, of course) of deep deflation (illusion of absolute efficiency and total security) followed by chaotic reflation. Instead of creating the conditions for transition from negative equilibrium to positive equilibrium thus turning the cycle endogenous, a disequilibrium sequel is triggered and as a result almost total dissolution of economic structure (similar to the one in Germany during Weimar Republic which brought about Hitler’s dictatorship), which makes the entire cycle exogenous. This creates an intrinsic vulnerability whose potential to become manifest is imminent, once economy enters the *mainstream* or the economic global flow. If it enters through a peak of the cycle, an accelerated growth will be triggered, with strong disequilibrium; if it enters through a low of the cycle or if this low comes too soon after effective convergence is effective, a strong contraction will take place and will annul all achievements of the previous period of time.

This is of course a hypothesis in the absolute; none of the Eastern countries has managed to achieve a completely negotiated transition and no transition has been chaotic; except for the unhappy case of former Yugoslavia where reasons of some other nature forced it to an impetuous transition. If we go back to our comparison Romania-Poland, we can see that Poland followed a so-called negotiated way of transition; it has been the only Eastern country, over the twenty years since 1989, whose standard of living, according to the indicator GDP/inhabitant, didn’t have a transition-

related decrease but a growth; although the moment of the critical mass was reached at a peak of global growth (mid '90s when America and Western countries were recovering after the recession at the beginning of the 90s), Polish economy still had a constant trend; we can even say monotonously ascending, with a growth rate of approx 4-5%. Of course, the moment when the critical mass was reached does not coincide with the moment Poland joined the global *mainstream* (to use an Anglo-Saxon word in order to be concise); in our opinion, when this moment took place (when domestic prices started to coincide with global prices or to adjust to them/"shadowing of global price movement"), in 2000-2001, global economy was in a short recession. Although the impact of the Russian crisis in 1989 couldn't be excluded from the evolution of Polish economy during 2000-2004, under the combined circumstances of the impact of this crisis and of the short global recession in 2000-2001, Polish economy continued to grow, although at a reduced pace. Moreover, right at the moment when economic growth is resumed at accelerated pace (year 2004 when the interests rates of the USA Federal reserves reached a historical low, which launches unprecedented cash on the global market) Polish economy had no sign of warming but it continued its moderated growth. Not even the global economic Depression had such a strong impact apparently. The Polish economy was the only one that maintained its growth during the first quarter of year 2009, despite all estimations. This can only confirm the initial hypothesis according to which the sooner the critical mass during transition from plan to market is reached, the less vulnerable the market will be and a relatively robust motor of domestic demand will be created. The creation of this growth motor will practically create economic Flexibility, this time for real and not chaotic, which allows apparition of flexibility on the labour market, both external and internal. This explains why Polish migrants could return to their country when crisis came to Great Britain (main destination) whereas Romanian migrants stayed blocked in Spain or Italy waiting for a recovery of these economies rather than trying to return to a market that is very little flexible and lacks a motor of internal demand. In other words, a market that had nothing to offer under recession.

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Chart no. 3



By contrast, in the Romanian model where Critical Mass comes only after a longer time has indeed the advantage that it allows effective completion of transition from Plan to Market through very rapid growth and high pace. This model, however, because of the long time wasted until critical mass attainment, does not allow creation of the motor of domestic demand, thus blocking economy only in the motor of exports or mainly in it. This rigidity of growth is transferred onto the labour market as well; here, labour force has few options and transitions are done with difficulty. Unemployment allows transition towards a new job with difficulty and very rarely; a marginal trend of inactivity increases or migration for labour, both new factors that render the labour market rigid.

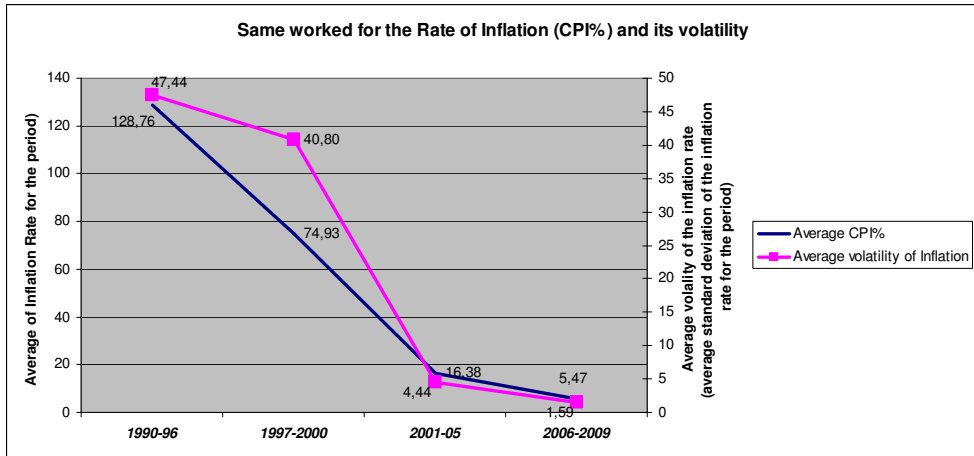
Moreover – and this is the main problem – Stop and Go transition or chaotic transition creates a deep feeling of insecurity since it reduced almost to zero the role of the state; from a privileged actor of the market (*the lender of last resort* – not to understand master of the market!) the state becomes just any actor. Which does not mean that the state cannot ensure security needed by demand and especially by supply in order to exercise their flexibility. This is the explanation of the apparent rigidization of the Romanian labour market at the beginning of this century. After ten years of chaos, the representatives of the supply, using their last power, imposed a Labour Code apparently rigid but ensuring the supply a minimal security after a period of maximal insecurity and chaos. Hence, if we take into account the calculations made by Ciuca, Mladen and Pasnicu using OECD methodology, apparent position of Romania is in maximal rigidity area. If we look not only at the aggregated scoring, which is nothing else but an

imperfect mirror, an instrument to do an exercise of rough international comparability, but we go deeper and examine components and scores per component, we'll notice that Romania actually ensures better protection to employees against the risk of collective dismissal which is assimilated in the collective thinking with chaotic transition and has a deep connection with the so-called total efficiency of the market or with the perception of total efficiency (all know the same thing and no one knows more than the others) of a pseudo-market, even if deep scarcity, but extremely close to social desirability; this is nothing else but a waste, deep and difficult to remove, coming from the old long period of centralized planning of economy (actually, *kriegsoekonomie*).

This unique aspect creates a so-called rigidity; for the other two components, Romania is not far from the other European countries and in any case, it is less rigid than France which has the advanced economy that apparently resisted best to the crisis, precisely because of this strong sector of permanent employment which was in itself the most efficient automatic stabilizer of economy. In contrast, Ireland and Great Britain suffered most. Moreover, protection against collective dismissal in Romania is purely procedural (that is why we insisted to look behind the indicator at real facts). Labour Code, as it is now, allows a great flexibility to the parties to establish effectively the conditions of the process and the generosity of compensation packages. What the Labour Code stipulates as primary legislation is only a formal framework, very easy to comply with by anybody and including many but extremely easy steps (in principle, a sequence of formal notifications therefore many papers but little substance). However the essence is the way in which the employee is actually compensated against the risk of collective dismissal and against the nature of such an event which is a real random exogenous shock for an individual, therefore an event difficult to predict and whose consequences are significant (they practically change his entire previous social and professional background!). The author of this book made a careful analysis a few years ago and found out that actually we are at the lower limit of European regulations. Practically, all so-called elements of rigidity are elements introduced strictly in order to declare that all elements of European legislation regarding collective (to take only this field as example) dismissal have been assimilated. No other reason!

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Chart no. 4



Starting here and coming back to our comparison with Poland which is apparently a much more flexible market but actually much more rigid than it seems from the outside¹¹⁴, we estimate we shall be able to define a rule of flexibility and security in economies in transition that can be stated as follows: **The higher the autarchy level after Communism, the deeper the socially desirable perception that market has perfect efficiency.** This deepened initial chaos and delayed the moment to achieve Critical Mass of Progress in the Transition from Plan to Market. This delay weakened the role of the state as a guarantor of security and increased vulnerability of economy, which resulted into reduced flexibility (ability to rapidly substitute between the two motors of economic growth). Hence, an increased marginal tendency towards restoring security, at least formal, in favour of the supply on the labour market and hence, apparent rigidity of the labour legislation, which is nothing else but normal reaction to the chaos that followed a status apparently desirable from the social point of view, although profoundly undesirable and removed precisely for that reason.

¹¹⁴ Since the so-called indicator of rigidity of legislation does not take into account the regulations regarding unions and their roles; Polish law, elaborated by and under the influence of SOLIDARNOSC union is by far more generous with the unions which actually influences indirectly but strongly the rigidity of the labour market. Primary legislation stays a minimum for the so-called *outsider* of the market while the *insiders* are by far better protected by a framework said to be more flexible, the Polish one, than by a framework said more rigid, the Romanian one.

4.3. Competitive flexibilization and social desirability in a Post-Transition economy

Alexis de Tocquville, author of “*Of Democracy in America*”, said once, around the revolutionary year 1848, that what connects democracy to socialism is a word –EQUALITY. Except that, while democracy means equal opportunities for all, socialism means equality in misery. This witticism tells a lot. This was written at a time when pauperism was the main preoccupation of a developing society, one in which even princes like Louis Napoleon (future Emperor of the French Napoleon III) were writing, although from prison, on “L’extinction du Pauperisme”. It shows, however, how long the distance is between what we call the theory of the efficient market, therefore a market where each individual exploits information to one’s own benefit, with opportunities – certainly not equal; imperfectly equal – and the social desirability. Social desirability does not seem to be the selfish pursuit of individual interest (a less famous predecessor of Smith said that the motor of economy was not individual interest but vice; or, greed seems to be a vice) no matter how much profit it would trigger and no matter how much it would contribute to individual prosperity, by way of direct consequence and collectively, on the contrary.

Social desirability is equality.

In other words, it seems that social desirability – as it is known in public consciousness – is egalitarianism; that state in which we are all equal, none of us is worse off or better off. Such an equilibrium, although no one defines at what level it should be manifest and no one realizes that it can very well be manifest, as brilliantly says Tocqueville, very often in the deepest poverty and misery, seems to be the ideal aimed at by many, if not most individuals. Keynes also, at the end of his main book, seemed seduced by this idea; harmful however, as history proved. The essence of this seduction of egalitarianism, which can be translated by total SECURITY, is negation of FLEXIBILITY. By contrast, pursuit of individual interest and one’s adapting to circumstances to achieve it is nothing else than maximum FLEXIBILITY.

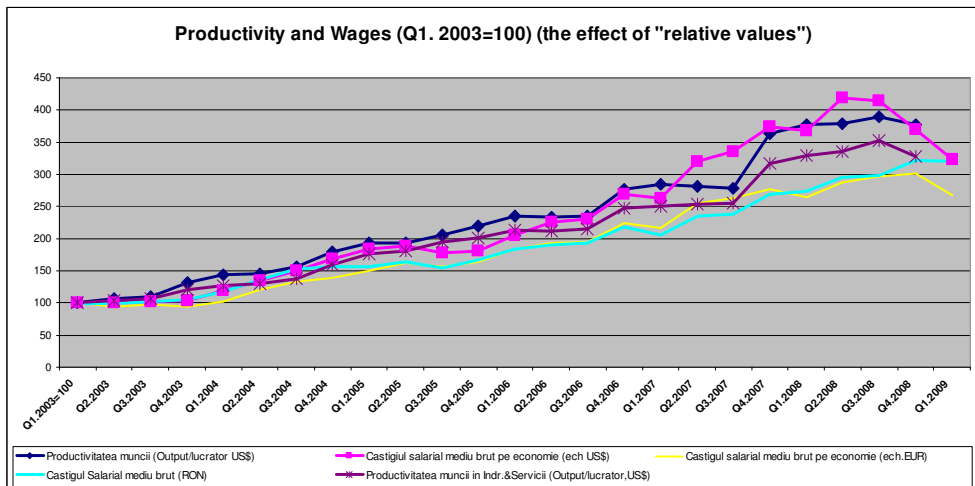
Hence, the need to understand FLEXICURITY, especially FLEXICURITY in the context of post-transition societies and economies, like Romania, and their social dialogue; a society traumatized by total Security (Communist egalitarianism) and by the chaos of transition (Flexibility understood exclusively as pursuit of individual interest without taking into account *moral principles*) wishes to reach equilibrium. An equilibrium, which should also have a certain level of social desirability.

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What we have just said brings us back again to the way prices are established on the market because this is basically the signal that orients the actors of the market, a signal given by some actors to the others, this is vital information which, when used efficiently, therefore for individual interest, can bring or not achievement, partial achievement or failure to achieve.

It would mean, however, that price has nothing to do with social desirability; the way price is established depends exclusively on Flexibility, on individual interest pursued diligently and brutally, under conditions of inequality. The answer is difficult but it mostly seems to be like this. The market price, although it can be what the Anglo-Saxons call “fair market price” is almost never the most socially desirable.

Chart no. 5



The same happens with the labour price, i.e. the salary. For this reason, one approach of flexi-Security or flexicurity is the attempt to bring the market price, through various means, close to social desirability.

One way is the minimum salary. In other words, a minimum price under which labour would become socially undesirable.

In the Romanian society and economy, characterised by poverty and misery to an extent almost unique in Eastern countries, this threshold was at the end of the '80s practically half of another threshold which shouldn't be related to social desirability – average salary (purely statistically, average salary is either gross or net). What it was desired and achieved in a society in which all individuals knew the same thing and, by knowing the same

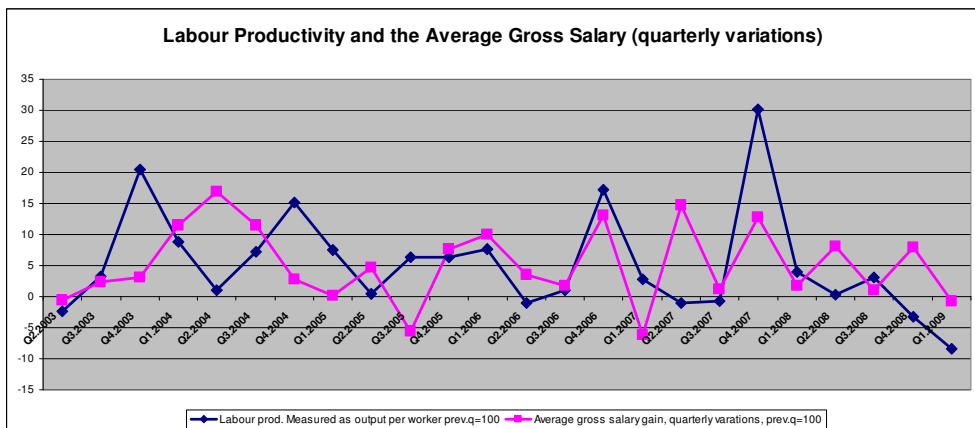
thing, they couldn't actually fulfil individual interest; it was a sort of social desirability of the lowest level possible.

It is of course socially desirable that the lowest-placed individuals should be not separated by a precipice from the others; however, the question is how efficient this can be. By achieving desirability and therefore providing too much Security, don't we kill efficiency and Security?

In Romania of the '90s, this question had still no answer. The disaster caused by centralized economy was so deep that economy collapsed, practically dissolved. The entire society began a process of chaotic reflation in which social desirability did not count any more, it simply disappeared. After the stabilization resulted from reforms at the end of the '90s, the question and the problem appear again. They have become a main topic of social dialogue.

The representatives of the supply practically imposed an approach according to which what counted was social desirability. The minimum labour price did not have to reflect the efficiency of information of the market but it had to be socially desirable, for as many as possible, irrespective of the efficiency of the information used on the market; in other words, irrespective of the extent to which, through flexibilization, therefore adapting to the conditions of the market, people knew to pursue individual interest. In other words, individual interest came on the second place; first place was taken by collective/social Security, a corollary of the concept of social desirability.

Chart no. 6



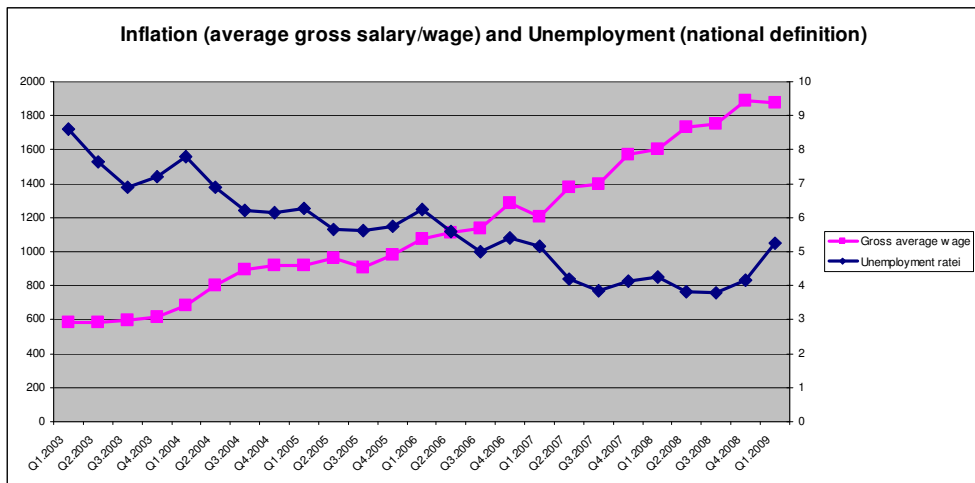
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In itself, this means that, far from keeping the pace with productivity, the minimal salary was designed exclusively as a Security instrument, the only available in a state, which was almost dissolved at a certain moment and did not manage to ensure a modicum of Security. The market was therefore “invited” to provide this modicum of Security, which cannot be and should not be provided by the market.

This model of thinking and action was underlying the salary evolution and labour productivity trends during the first ten years of the 21st century. Although the salary level, therefore the labour price, and even the minimal salary, can only be dictated by productivity, because it represents the minimum levy on productivity for the labour force, without which productivity could not be achieved, in Romania, during the first ten years of the 21st century, the minimal salary was never connected to productivity. The connection was actually established by an illusionary social desirability which should have been reflected somehow; the same too long-lasting social desirability which had been precisely the cause of the disaster which economy had left behind.

Consequently, increases in the minimum salaries were – at least in early '90s – not connected to productivity. If the evolution of the average salary was connected to productivity, without going surpassing the trend, except for a few quarters in 2007-2008, the minimal salary was (except for 2006-2008) not at all connected to the reality of productivity but exclusively connected to desirability.

Chart no. 7



What was the consequence? A new rigidity of the labour force and economy, in general. If, compared to foreign markets and especially with the main export market, i.e. Western Europe, labour price in Romania stayed low and thus continued to have a competitive advantage, low as it was, because it compensated the difference in productivity, the labour price was high compared to the domestic market. In other words, if Romania was able to set in motion the motor of economic growth through exports, it could not set in motion its own domestic market. In terms of productivity, although increasing, the labour price, strongly influenced by a minimal salary based not on efficiency but on social desirability, continued to be high for the domestic market which, instead of absorbing domestic production in order to set in motion the second motor of economic growth, started to absorb the production of foreign markets whose productivity compensated even a higher labour price.

In other words, a too deep passion for desirability stifled Flexibility from the very beginning and prevented the creation of a stronger domestic market, thus increasing the vulnerability of Romanian economy to random exogenous shocks like the current global economic depression (synchronized recession).

The policies implemented during the first ten years of this millennium, which resulted into successive increases of the minimal salary with no apparent connection to productivity practically inhibited the domestic demand. The increased labour price made the domestic market unattractive for domestic producers; hence, excessive orientation towards needs of foreign markets, followed by the implicit corollary of increased vulnerability in case of reversed cycle. Starting with mid '90s, when the principle of social desirability was gradually given up, mechanisms started to be set in motion. By linking the labour price to increased productivity and by giving up the obsession of desirability, under the circumstances of an exceptionally favourable international economic environment, a motor of economic growth based on domestic demand was set in motion. However, the same rigidity typical of the first years of the '90s caused the average salary to increase above the trend, therefore to lose connection to productivity too, once desirability was given up. It was only the consequence of a time when labour price was kept for too long in the trap of a false social desirability by pushing it above the productivity-related minimal salary, which resulted, into inhibition of the average salary (inhibition of flexibility through Security). Once this barrier removed, the salary resumed its tendency, like any other price. Because it was happening at a time when Romania was joining the EU and a process of price

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harmonizing was taking place, this accelerated ascending movement was boosted; it was *actually a recovery movement*, normal for any PRICE! This recovery movement managed to set in motion the motor of domestic demand which had been frozen for too long and, after 2005, it became the main factor to sustain accelerated economic growth, accompanied this time, unlike in the early '90s, both by visible increased living standards and, maybe not paradoxically, by increased social Security (or better to say, increased degree of appropriateness of social protection/ Security services/benefits).

We can argue here about the existence of relations between these variables. Although there is a relation between them, this does not necessarily mean determination. In addition, the Romanian economy is a small open economy and it was fundamentally influenced by the very favourable evolutions of global economy, sent through the channel of rate exchange and prices of goods that are subject to transactions in bulk (fuels)- which are a good proxy for the general progress of global economy; or it may have been needed a new critical mass, as the one during transition from plan to market, therefore a point from where economic growth could indeed generate prosperity a.s.o., a.s.o. However, in our opinion, a correlation between the removal of social desirability, cumulated with shift of focus from market efficiency and an ascending labour price with the corollary of increased living standards and at the same time, although it may look paradoxical, increased employment rate, cannot be denied.

By maintaining desirability, we lost some good years when we enjoyed an international economic climate, which may never come back; domestic market could have been consolidated and thus an alternative motor of economic growth created. This motor appeared after 2005 but the number of successive years while it could have been manifest was too small to create an efficient shield against actions of random exogenous shocks. Consequently, one problem we are facing today, i.e. the serious recession that affected Romania in the context of the exogenous shock of global crisis, definitely originates from there. By not allowing labour price to be adjusted to productivity, thus becoming attractive to the domestic market as well, not only to export, precious years were lost – during which a strong domestic market could have been created. When eventually this separation took place, the labour price speeded up, the connection to productivity was somehow lost and the domestic market thus created was mainly speculative, unable to support economic growth in case of reversed cycle on foreign markets.

However, there is something unclear here and we have to resume the arguments previously stated before completing this paragraph.

If we take into account Poland that has been and stays our reference, we shall notice that the obsession of desirability was even stronger. The minimal salary replacement rates against the average salary (we shall use here this general expression and ignore the usual wording) were constantly higher than in Romania on the one hand, although, on the other hand, a more permissive legislation on contracts with determined duration and a less rigid legislation on collective dismissal (protective therefore with *insiders*) caused the unemployment rates to be constantly higher than in Romania. However, with unemployment rates higher and stronger social desirability, Poland managed to flexibilize national economy by creating a strong motor of domestic demand as an alternative to reversal of cycles on export markets.

What is the explanation? Are we making a mistake somewhere? No, it is not a mistake; in a post-transition economy, everything resides in the initial conditions that remain an immutable fact, which nobody and nothing can change. The Romanian labour market had a weak point less favourable. It was extremely rigid towards centralized planning, which caused its dissolution through transition from plan to market. Consequently, it is more difficult to re-establish equilibrium and recovery time is longer. Volatility of labour price has been and it will stay high for a long time; changes from approaches too much focused on social desirability to approaches focused too much on efficiency have been too sudden or too forced.

Since the labour price is the main pillar around which FLEXISECURITY concept is built, the way it is shaped and its flexibilization are and will stay essential for a national economy, practically for a society when it decides to adopt this concept as guiding one. It is a historical *zufall* that deeply influences the macro-economy of this concept. A more favourable starting point is an advantage difficult to compensate since labour price, unlike other prices, is strongly related to social desirability or the Security dimension of the concept.

In addition – here is the key to understand the mechanism – the more initial rigidity was higher, the more persistent the temptation in time to control price and to create desirability by controlling prices, especially labour price, which can only lead to persistent rigidity and to an obstinate refuse of flexibility, even with the price of vulnerability. However, people are not aware of this price because they want all individuals to be equal in vulnerability. This is the most destructive thing.

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4.4. Strengthening of Security pillars as basis of the flexibility approach – reform of the main contribution-based social protection systems

In his “Way to servitude”, Hayek said that individuals accept easier a negative fact, whatever it may be, if it is impersonal, not directed towards a particular person, and more difficult if it is personalized. Economic phenomena are usually impersonal. Nobody can tell exactly why the Big Economic Crisis started in 1929-33 or why global economy, so sophisticated nowadays, entered the depression currently going on and why countries with small open economies like Romania are particularly affected. There are many possible explanations but none of them covers the complexity of this phenomenon which proves that these phenomena, although not personalized or related to a person, are big-scale events, impersonal, and a unique cause or a unique person to blame, if any, are impossible to identify.

Such events which cause maximum insecurity and create excessive volatility, sometimes chaos and dissolution, are only normal manifestations of the efficient markets theory and are actually moments when markets re-become efficient as a result of a status of extremely informational asymmetry. Actually, the extreme volatility of prices (consumption prices, interests, exchange rates or salaries, as the case may be) which in themselves represent economic or market information as such, shows that these events are related to informational asymmetry, impossible to control.

Such moments in the capitalist economy creates the need of Security in individuals and in society. If the free movement of needed, although sometimes not socially desirable, as mentioned in previous paragraphs, in order to stimulate Flexibility, it will be also this volatility of prices, therefore informational asymmetry, the a sine-qua non requirement to ensure Security of individuals and society. Without informational asymmetry, the Security need will not be manifest; consequently, individuals and society will be in total insecurity.

This is the status of security systems, or social protection, since the beginning of transition from plan to market. Since there was a lack of informational asymmetry, no need of Security was manifest. All individuals were living in an illusion of security or protection while they were actually unprotected.

This lack of protection became manifest right after a modicum informational asymmetry, definitely needed to escape economic collapse was introduced. However, we have to notice that the first stage in this

reform, transformation of social protection systems and their modernization, to use a term from the flexicurity jargon, was not to orient them to meet protection therefore Security needs, because this was not perceived as such, but to meet social desirability. The first measures taken in the pension system, which is the topic of this paragraph (unemployment benefits will be discussed in the next paragraph of this Chapter) aimed at rendering the system more socially desirable, not necessarily at making it more appropriate or enhancing its sustainability or strength. In other words, a system that anyway depended nominally only on contributions paid in and did not motive participation (lack of informational asymmetry inhibited to disappearance the tendency towards individual Security/protection against ageing, but involved maximum desirability) was altered by the first measures taken after 1989 to make it more desirable. Therefore, the minimum connection between contributions and benefits was almost totally broken.

Any such system, any social protection system, especially based on contributive financing – this will be our topic further on, since the Romanian system is almost exclusively contributive to the main social protection schemes (called insurance schemes although this word is methodologically not appropriate; but we shall use it to facilitate understanding) – is based on three elements: contribution basis, contribution rate and contribution itself that is levied on the basis (it is not a tax but a levy!) and the duration of contribution (called duration of contribution). The scaffolding of social security and social protection, especially if it is organized on contributions, has these three main elements. Their alteration cannot be done *ad-libitum* but only coherently so that a balance could be reached among these three elements in order to ensure appropriate benefits; which can be done by bringing together the contribution and the contribution basis, and sustainability and especially STRENGTH, above all, taking into account the axiomatic, historical and economic existence of random exogenous shocks. That is the mere ability to resist shocks in time.

A too strong tendency towards desirability compromises this balance. This happened during the first ten years after 1990. Gradual reform, *stop an go*, the slow liberalization of prices, therefore the slow pace of inducing Flexibility in economy – induced a gradually stronger desirability which pushed benefits away from the contributive basis, caused aberrant disparities and flat benefits that undermined the natural tendency towards Security, thus miming the contributive basis of the system. This tendency which started with the radical reforms between 1997-2000 has now ended; it had become unsustainable anyway as a result of the economic reform itself

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which was unfortunately too gradual and diminished the contributive basis of the system; it led to a chronic inappropriateness of those benefits whose purpose was to be as much socially desirable as possible and to preparation of implementation and later on, to implementation of an institutional framework meant to ensure the Security and social protection basis without which labour Flexibility and Flexibility for human resources is not possible.

Thus, transition from rigid, inflexible and unsustainable Security to Flexibility in or with Security began. This process was launched by the adoption of the new law on public pensions (Law 19/2000) and it continued by recalculation of pensions, that is bringing all payment benefits to a level as high as contributions. These two processes are the core of what we call parametric reform of the public pensions system, and transition from a system based on pre-defined benefit, even though rudimentary, to a transitional system, something between a system with pre-defined benefit and a system with re-defined contribution (pre-financed) appropriate for the needs of an emerging capitalist economy, open and relatively small (to note that in 2001 when this process started, Romanian economy was very modest, GDP was around 40 billion US \$).

This new system ensured an almost complete connection between contributions and benefits; the pension, as **main element of social Security** – since it ensured protection against or better to say *in relation to* a social risk, ageing, whose probability of manifestation was maximum for each individual (compared to the risk of sickness or unemployment whose probability were not so high –in other words, an individual can live his active life without necessarily becoming unemployed or suffering from a serious disease; however, **THE INDIVIDUAL WILL DEFINITELY GROW OLD!**) – is calculated for the entire duration of the active life, by taking into account the duration of contribution and all contribution bases which are levied on during active life. Thus, the longer an individual contributed and the higher the contribution basis, that is the income, on which the contribution rates were levied, the higher the pension of that individual will be. Subsequent modifications, especially in 2007, which extended the contribution basis so that to include all incomes, thus removing the ceiling of a maximum number of points that could be accrued by an individual in one year and which influenced the average number of points accrued during the entire active life, made the connection between benefit and contribution complete. In addition, the re-calculation of pensions between 2004-2005 (in general, of course, since the legislation stipulated the possibility to make corrections which allows the process to continue currently – September 2009) led to a balance between contributions and

benefits, including the pensions calculated before 01.04.2001 for millions of people, which were calculated without infringement of the fundamental non-retroactivity principle. In itself, this process of implementing of the sacred principle of any Security contributive system of “equal pensions for equal contributions” has been and still is a unique characteristic of the parametric reform of the Romanian public pension system compared to European systems, not only Central and Eastern European systems. The creation of this Security pillar lasted for long; however, at the end of the road, in 2007, the configuration of a system, which, on the one hand, could provide appropriate services, and on the other hand, was able to ensure sustainability and strength in time, had been achieved; this system acted as social inclusion and social cohesion stimulus. Thus, the active individual was practically stimulated to develop working capacity, to act so that to increase one’s income during one’s active life and especially to prolong one’s active life and to reduce interruption times (“a life-time approach to work”) since the most important Security anchor, the pension *for completed working life* (which is “*old age pension*”) depended fundamentally on these elements.

However, these components as well as other components of the economic and institutional structure generally called FLEXICURITY or FLEXI-SECURITY, the deep mechanism that make this structure the ideal instrument to build anti-cyclic policies has not been understood. They could not have been taken into account in the transition from plan to market which is a too radical transformation, a real *Schumpeterian* process that cannot take into account equilibrium statuses; but they could and should have been taken into account once the Romanian economy turned from transition economy into an emergent market economy; in other words, when price variations (proxy for Flexibility) on domestic market started to become convergent from the point of view of amplitude and volatility of this amplitude with international ones (around 2004-05).

From that moment on, Flexi-Security policies, as anti-cyclic policies, had to be taken into account. In this context, social Security systems, especially the contributive ones with their three components (contribution basis, contribution rate and duration of contribution) were an extremely strong element of anti-cycle. During growth times, contribution rates at levels that could ensure payment of both current and future liabilities (in our case, payment of appropriate pensions not only at the moment but also in the future for current contributors) ensured, with no particular effort, a measure to sterilize the market, to attract excessive cash and to moderate economic growth, thus preventing speculative excesses. In recession, reserves accumulated during growth times as well as maintaining constant

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contribution rates, not increasing them to overcome temporary deficits, ensure the so-called “automatic stabilizers” (pensions are one of them!); this will maintain aggregated demand and attenuates the recession slope, thus allowing a more rapid and sustainable resumed economic growth.

The Romanian policies in this field did not follow this trend. The evolution of the Romanian economy was not enough analysed and the moment when Romania took the important step ahead from a transition economy to an emerging capitalist economy was not noticed; at that moment, policies should have been adjusted accordingly. From that moment on, policies should have aimed not at an accelerated transition but at an attempt to prepare Romanian economy to adapt to cyclicality, inherent to capitalist economy. Further reductions of contribution rates performed in 2004 harmed and destabilized the main components of the social protection system; that is the public pension scheme. Starting from data available at the moment that indicated increased contributions against the background of economic growth, the successive governments between 2005-08 dramatically amended these rates by taking into account only current liabilities, not also future liabilities, and starting from the false assumption that economic growth could have lasted for ever (on the other hand, taking into account the low development of the Romanian economy, in the **absence of random exogenous shocks**, the growth time, although not always long – effect of convergence- could have continued for 10-12 years more, that is until 2020-22).

Under these circumstances, the social Security system with three components, instead of exercising its role of anti-cyclic component, which would have calmed down speculative excess, played a pro-cyclic role (each reduction incurred a new one and especially the expectation of a new reduction, which caused excess of demand, because of the assumption of new increase of available income). Once the global crisis started (depression), the social Security system was no longer able to exercise its role of automatic stabilizer. In January 2008, the new government had to increase the contribution rates in order to cover current liabilities, which induced an extremely negative message into the market and contributed effectively to increase contraction by reducing available income at the very moment when it was no longer needed on the market. At the same time, certain elements regarding the appropriateness of pension benefits/services needed to be amended which also diminished the possibilities of this automatic stabilizer to act, thus dramatically enhancing the contraction of domestic demand and implicitly, the general economic contraction, also through the effect of expectation.

This brief review shows how important is the role of Security/protection component of the structure called FLEXI-SECURITY. Practically, if Flexibility is ensured through prices, that is by minimizing intervention in the mechanism of establishing prices so that prices reflect not social desirability but coherent and efficient expression of the information available on the market at a certain moment and the way the actors of the market manage to use it, Security, social protection will represent the main component which, in its diversity, ensures desirability of the entire system, practically by ensuring relative stability (anti-cycle). It is difficult to change prices; any intervention especially in the sense of social desirability can be harmful. These systems can however be intervened upon easily so that they ensure correction of the effects of prices in the sense of desirability.

Hence, the need to connect social protection services, especially contribution-based protection to the actual *contribution base*, most often represented by salary. This connection will stimulate labour and act as main social inclusion and cohesion element (we can even say main factor typical of what we call “European Social Model”) and will be the only efficient and non-distorted action upon labour price (salary). That is why the current principle of the pension law according to which the pension point is connected to salary and not to evolution of consumption prices should be kept as element of Security and stability (anti-cyclic). In the context of prices, salary has the highest relative stability. Consequently, connecting of the pension point to the mechanism to increase salaries is not an obstacle for productivity increase but an element of anti-cycle because it moderates excess that sometimes productivity increases can create. The remaining prices, also the so-called “consumption prices” (usually, those included in the famous “index of consumption prices”, most popular but not necessarily most appropriate measure of inflation and therefore of economic volatility) have an inherent volatility. Consequently, connecting of the pension point to inflation (inflation rate expressed in variations of IPC) is not appropriate; this is an example of pro-cycle introduced in the structure of an anti-cyclic instrument. In other words, the mechanism to increase pensions does not ensure moderation of the economic cycle gradient, thus acting as an automatic stabilizer and agent of the Security component of the system but it turns into an incorporated pro-cycle element (like in the '90s; however, in the '90s, it was not so harmful since it was acting within an economy in transition from plan to market) which can only increase the gradient of the cycle and generate insecurity.

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Generating Insecurity within systems whose purpose is to ensure security means compromising of the entire effort to achieve a national model of FLEXI-SECURITY. Thus, the individual has no longer a stimulus to act on the formal labour market characterized by a formal Security component, but one will be stimulated towards the informal, in a desperate attempt – doomed to failure – to achieve Security. At the same time, Flexibility is endangered since achieving Security will be tried through other means, including interference in the mechanism to set the labour price, through the lever of the minimal salary whose function of social desirability will be maximized, thus inducing rigidity on the market.

In this context, we have to emphasize that social protection systems have a fundamental role in ensuring flexibility of the market although they are Security components. They actually ensure the individual temporarily thrown away from the market a possibility to return onto the market; they also – especially the pension systems – maintain the individual as active consumer on the market also after one stops one's active life, thus ensuring a fundamental role in stimulating the supply or the production. That is why it is fundamental to maintain connection with the basis levied on. If this connection is cut or loosened to disappearance, the individual will be marginalized and will never return onto the labour market. In Romania, the aged inactive population or the population employed in sectors with low productivity of labour (household production for internal use – agriculture for subsistence, mainly) are significant. If this connection is cut or loosened in the case of retired people, on the one hand, there will be a progressive limitation, as the connection between the aggregated basis and contribution loosens, as a result of increased tendency not to declare income or to declare partial income, a tendency which will enhance to paroxysm the effects of demographic evolutions, and on the other hand, this will destroy the role of pensions as automatic stabilizers during recession, with the unhappy corollary so that pensions will no longer be able to act as support of demand, even if they increase. A market without demand does not exist and cannot attract anybody. If a market cannot attract investments, it cannot be flexible (because of lack of enough actors) and of course cannot generate Security (since chronically, it cannot generate resources). It becomes an economy of scarcity in which FLEXI-SECURITY or a national model of FLEXISECURITY become a demagogical undertaking.

We cannot end our presentation of Security and its role is supporting flexibility without analyzing the need to diversify Security and the role of the diversification policies as booster of Security' ability of anti-cyclic action.

In the context of a global market, involving multiple risks, most of them of impersonal nature, and taking into account the demographic pressure, – although it is difficult to draw conclusions about the irreversibility of this process because such processes take place during several generations, usually beyond human ability to forecast with reasonable accuracy –, the existence of a social Security/protection system exclusively managed by public power, although financed by private actors, cannot be conceived any more; even if the Danish flexi-Security model, which is the reference for all approaches, operates with one of the most conservatory social Security/protection systems in the EU and in the world. The need to enhance Flexibility in order to ensure resources to Security leads naturally to the idea to diversify Security and thus to the so-called paradigmatic reform, therefore alteration of the entire systemic view in the sense of ensuring a place for the private sector as active actor of this whole.

Originated from the theory of the World Bank, although not enough tested, we have to say it, in the contexts of mature capitalist economies in Western Europe, this approach aimed mainly at the pension schemes, the biggest component of social protection systems, whose modernization – as continuous process – was imposed by the structure called FLEXI-SECURITY. Thus, the reforms of the '90s that took place practically in all Eastern countries in transition, aimed at creating pensions systems based on private management schemes that work on pre-defined contributions and in which we have the three elements above-mentioned (basis, rate and duration of contribution) most important are the basis and the rate. However, we must also take into account the volatile component of the productivity of investments whose purpose is to ensure actually the pension until the individual investment matures. In order to maintain these schemes within the limits of social protection, the pure market mechanism was emasculated, not only in terms of restricting the investment options but also by introducing the so-called national accounts whose payments are not done as the individual may wish but in a regulated way; the contribution rates result in most cases not through the so-called *top-up* of the contributions rates into the public scheme (that is by adding to the contribution rate) but by dividing it (*carve-down*). Also, although such a system was and should have been seen as complementary to the public system of social protection which should allow the latter to diminish contribution to the security of the individual in the future, it actually became a complementary system allowing the public system to lose current assets (by losing contributions) with no guarantee that an equivalent reduction of liabilities will take place in the future (therefore, a reduction of the benefits paid in). In other words,

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although initially this system was supposed to ensure a new anti-cyclic component which should have allowed a smaller gradient of cycle through additional sterilization of the market during growth and setting-up of reserves which could be used during recession, it became a new pro-cyclic instrument. Given the way it was conceived and implemented in Romania, like in many other Eastern countries, this system is a long-term threat to social security, economic stability and eventually social cohesion. Practically, this system does not capture additional cash during economic growth through supplementing of contributions rates, thus preventing excess of demand, but preserves this excess, even deepens it, because of the divide of the contribution rate. This divide, initially seen as facilitating the contribution burden, causes actually a significant reduction of the assets of the public scheme, while its liabilities increase. Moreover, the resources levied in this way become the resource for market speculations without calming the expansion of demand during expansion (additional contribution) they actually increase demand in speculative economy.

Moreover, because of the compulsory nature of contribution for large categories of active population, a sustainable source of income is created for the managers of these funds of a scheme, which alters the market stimulus in the sense of diminishing prudence and creativity. Consequently, productivity will be low. In its current form, this scheme will not manage to increase social Security and will not act as anti-cyclic component. Eventually, the beneficiaries of this scheme will see that, at the end of the duration of contribution equal to the one of those who contributed only to the public scheme, they will have the same pension except that this pension will come from two sources. Thus, the effect will be zero in the best case, if not negative. In this respect, in a document on actions of Member States to overcome the current economic depression, the European Commission has recently drawn attention upon the danger posed to social Security by de-capitalization or undercapitalization of such pension schemes, as a result of adverse effects (effects that will be felt on a long term, although the crisis may be soon overcome) in the current economic context. Organized schemes like the Romanian one or schemes of other New Member States of the EU, based almost exclusively on divide of contribution rates that are levied on bases with small absolute values and whose growth will be inhibited for many years from now on, which impose the principle of compulsory contribution (which means denial of innovation and prudence in what is actually not schemes of social protection but collective investment bodies, that is actors of the capital market) will act as elements

with high pro-cycle and economic and social risk. They will undermine the effort to achieve viable national models of FLEXI-SECURITY.

Diversification as such has to ensure high Flexibility within Security, which should allow a better coverage of the range of impersonal risks posed to individuals on a very open market. Practically, diversification within Security component makes security in itself flexible. Similar to the flexibilization of the provisions on part-time labour contracts or atypical, innovative forms of employment, which give the individual the chance to adapt oneself to the contexts of the labour market, to make the most of the opportunities thereof, in order to make more money and to fulfil individual interest as much as possible, diversification of social Security schemes have to allow the individual to protect oneself against additional risks which are nothing else but the logical corollary of the additional opportunities (to keep in mind that in economy, there are no benefits without costs but there can be costs without benefits!). In other words, the individual should be able to choose that social Security system that suits him/her at a certain moment and corresponds to one's possibilities without being allowed to go beyond a minimal threshold where one would become a dissolutive agent of society. In practice, the compulsory nature of the contribution to private schemes has no sense; it should be an individual option based on the opportunities and risks that an individual wants to take or take advantage of. We cannot conceive that public schemes can become vulnerable, therefore the most automatic stabilizer, and exhaust their assets in an organized way, to create artificially assets of private entities, which have no clear role of an *economic stabilizer* and they should not have it; on the contrary, their role is and must stay of a *speculator* (in the sense of taking advantage of opportunities, irrespective how risky it may be; no negative connotation!). Hence, the need to give up the compulsory nature of contribution and the need to make contributions additional (*top-up*) to the contribution into the public system.

This structure, including both stabilizers and speculators within the Security component, increases flexibility thus flexibilizing Security itself and adjusting it to reality, without allowing it to lose its role of attenuator of volatility and cyclical movements that are inherent to the market. Both elements have their role. Both are needed and they do not exclude each other. Moreover, their existence on the market is an advantage if each fulfils its role in order to combine FLEXIBILITY and SECURITY, conceptually and practically.

Consequently, without a social protection system, without a Security component highly developed and stable on which the pensions systems (schemes) can reside as the main long-term Security element, flexi-Security

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cannot practically exist. Without long-term Security which can be ensured only by a sustainable, strong pensions system with appropriate services, it is impossible to achieve “life-time approach to work” specified by the European Occupational Strategy. If it is not possible, the labour market will become rigid because, on the one hand, the agents of the supply (individuals and their organisations - unions) will try to get as many as possible advantages from the agents of the demand (companies) thus resulting into unacceptable manipulations of prices and especially of the labour price, in an attempt to create as much desirability as possible and to protect against shocks. The market will suffer segmentation: those who have a job and the jobless, those who have the great chance of jobs with legal contract and those who cannot find work unless they go down into the underground economy. On the other hand, employers will be more and more reluctant as they know what they are exposed to. Productivity will be mainly affected; volatility of prices and especially inflationist volatility will enhance; eventually, prosperity times, that is the ascending trends of the cycle will become poverty trends reflecting few people who accumulate in time while most only see little benefit. Practically, we shall shorten the prosperity periods of the cycle and extend the depression periods because without the Security component provided by pension systems, including those additional private pensions, individuals and corporations – for which Security is provided by the public system since it saves them the effort to maintain complicated and costly company pension systems – will be deprived of that impersonal protection which help them face impersonal shocks of the market, like in the Hayekian paradigm presented at the beginning of this paragraph. Without this protection, the individual and the corporate behaviours become aberrant; it will invite shock and consequently recession and depression, if not even final dissolution.

4.5. Smoothing market cycles in an emerging, small, open capitalist economy – Flexi(security) as anti-cyclic policy

In his General Theory of Labour Force, Interests and Money, Lord Keynes said that “the remedy of the commercial cycle is not to annul prosperity and to preserve semi-depression but to preserve continuously quasi-prosperity and to reduce depression as much as possible”.

This quotation is actually the basis of policies to attenuate the effects of economic cyclicality; some of them are part of the general concept of FLEXI-SECURITY. In addition, this quotation reveals, and maybe not accidentally, if we remember that in those times we find the origins of the

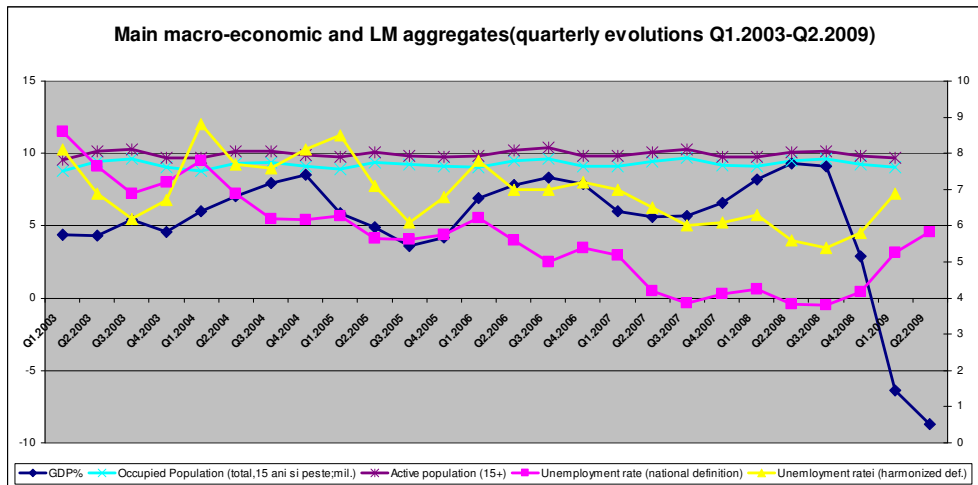
unemployment benefit (the famous “dole”) in the social protection system of the USA, the actual role played by the unemployment benefits system, as a short-time anchor, in keeping the balance of the labour market and in providing a second social protection, after the one ensured by the pension system.

This rather recent innovation contributes to the equilibrium of the labour market, needed to implement flexi-Security. Without claiming that we have discovered the Grail of flexicurity, we can say however (by two concepts borrowed from the theory of the rate exchange) that:

- The pension systems ensure what we can call long-term, fundamental equilibrium of the Security component of the concept, while
- The unemployment benefits systems ensure what we can call behavioural equilibrium or short-time equilibrium of the component.

Without these equilibriums, Flexibility remains an illusion.

Chart no. 8



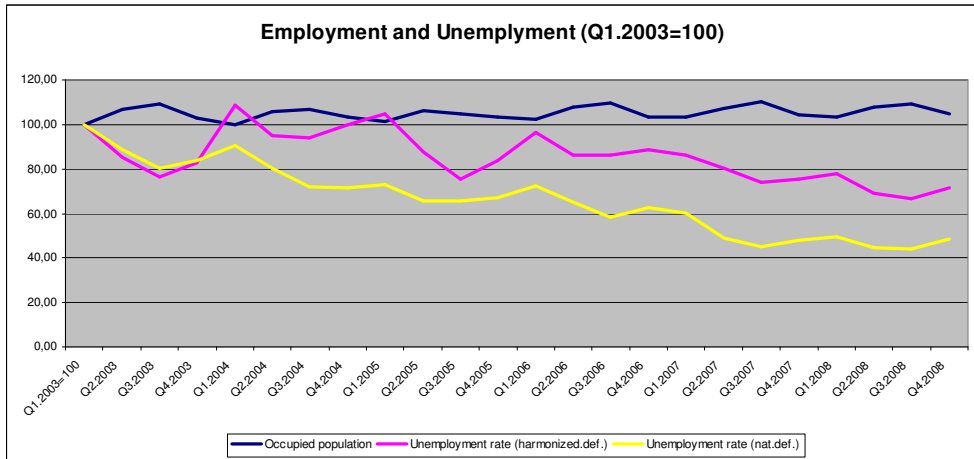
The unemployment benefits insurance system, for corporations and especially individuals, help overcome semi-depression quicker and turns it into transition between two prosperity statuses, a previous one and a future one. The role of this manner to ensure security is to prevent depression and scarcity to stay permanent. In this context, unemployment insurance plays a major anti-cyclic role.

The way it is regulated in national legislation makes this role stronger or weaker. It is in this component that the Danish model has its strength. An extremely generous unemployment benefit, although non-

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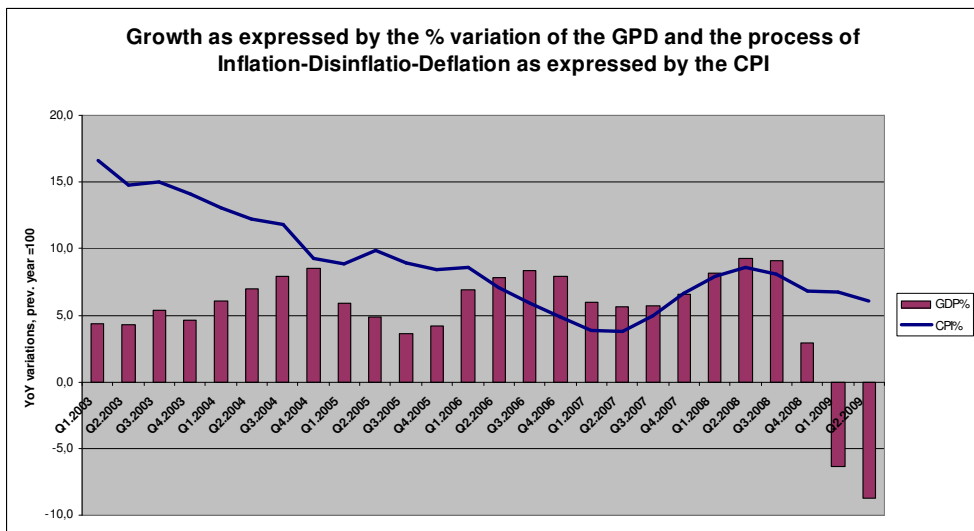
contributively financed, which contributes to minimization of semi-depression, allowing the employee fast access to another time of prosperity.

Chart no. 9



However, other systems, including the Romanian one, although contributively financed, do not manage so. Their evolution during the twenty-year transition from plan to market as part of an emerging capitalist economy is the key to understand this relative failure.

Chart no. 10



It seemed initially that this thesis had been understood well since the first version of Law 1/1991, the first law which regulated this aspect - social protection contribution and how can people benefit from it,- stipulated a strong relation between contribution, i.e. the contribution basis before unemployment and the benefit ensured during unemployment so that an individual, temporarily out of the labour market, could return as soon as possible onto the labour market. Unfortunately, the slow, discontinuous reform, which was typical of Romania's transition from Plan to Market, made the financing basis erode and caused the appearance of aberrant behaviours. The impossibility to finance generous benefits since the financing sources were vanishing as the former economy disintegrated as well as the false need to respond to the imperative social desirability gradually weakened the link between benefit and contribution. A study conducted mid-decade by the author of these lines showed that the link between contribution and benefit in the case of this service has the shape of a reversed bell (polynomial function of 2nd degree), with a peak at the beginning of transition, an extremely deep valley at its middle and a new ascending gradient as transition from Plan to Market was ending, that is Romania was approaching its economic growth during the first eight years of this century. However, if one side of the bell is extremely steep, because the link between contribution and benefit was lost quickly as the difficulties of transitions were deepening, the resuming of the ascending side had interruptions, was slow and only partial.

Actually, during the evolution of this system and of its ability to ensure transition of the individual through individual semi-depression towards re-gaining of relative prosperity, or in other words, from unemployment into employment again, and not from employment into unemployment and inactivity, there is a moment when the link between contribution and benefit is totally annulled. It is the moment when Law 76/2002 was adopted; it is still in force, but in an improved version. Its first version annulled any link between contribution and benefit and set the unemployment benefit or the dole (let us use both terms for better understanding, although the different terms imply differences in semantics) at the threshold of 75% of the minimum gross salary at a certain moment in time. It therefore set a rate under the minimum socially desirable threshold, assuming that it will enhance labour attractiveness; that is, when faced with this adversity, imposed not impersonally through market mechanisms but deliberately, at the discretion of the public power which was taking over the contributions of individuals and companies without justification, the individuals would take action and look for a job or go to professional

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training and thus, they would return quickly onto the labour market. For temporary reasons related to the financial equilibriums of the Unemployment Fund which were seriously affected at that moment, it was omitted that the human being cannot depart from Maslow's pyramid and, in principle, an individual thrown into misery will return to prosperity with much difficulty. A principle contradicting the flexi-Security approach was imposed: an individual should stay in quasi-prosperity in order to return to prosperity and should not fall into depression, into total misery. The effect of this obviously pro-cyclic measure was continued tendency to reduce employment rates, activity rates and high unemployment rates during 2002-2005, with many layoffs, including layoff subsidized by the public pension systems through disability pensions. In other words, the intention to re-balance exclusively a small social protection system jeopardized the re-balancing of a big social protection system (pensions) at a faster pace and deprived economy of a lot of human resources whose contribution to productivity cannot be neglected. It was thus artificially generated a period of time without employment growth, migration for work abroad was encouraged and valuable years of economic growth at rates higher than potential rates (Output Gap, positive) were lost; this would have accumulated significant resources which would have ensured, in their turn, a strong stimulus during crisis.

The effect of economic growth without increased employment rates caused mainly by enforcement of Law 76/2002 in its first version triggered a postponing of the expansion of domestic demand. If this process had started in 2002-2003, when economic growth was really strong, it would have lasted for several years, which would have allowed gradual reduction of the potential to create speculative bubbles with the corollary of attenuated disequilibrium of foreign competitiveness (disequilibrium of balance of payments). This would have allowed a better operation of the labour market, a quicker recovery of the economic structure and also reduced vulnerability and especially, in our opinion, reduced concentration of economic growth accompanied by increased employment rates in a small number of years (2005-08), which caused disequilibrium without allowing resorption. Of course, it is only our opinion, only partially supported; it is obvious that the increased employment and the reduction of unemployment between 2004-2008 were not caused only by these reasons. The significant inflow of foreign capital into Romanian economy, as direct investments and portfolio investment, inflow owed partially to the prospective European integration, that is joining an area perceived by investors as having a relative stability, but also the extremely relaxed monetary policy promoted by the Federal

reserves of the USA during the latest mandate of Alan Greenspan which caused a huge cash flow to be released onto global markets, thus reducing the costs of the capital, have been the main factors that caused economic growth in Romania between 2001-2008, especially between 2004-2008 (see also C. Ghinararu “*Efectele Politicii Rezervelor Federale Americane asupra Piețelor Emergente din Europa Centrala și de Răsărit*”/Effects of the Policy regarding the American Federal Reserves upon Emerging Markets in Central and Eastern Europe); some other factors were involved as well; in our opinion, one of them was alteration of the initial principle of Law 76/2002 which was done at the beginning of 2006 and this is supported by the huge reduction of unemployment rate, as it is reflected precisely by the administrative measure of this variable of the labour market. This alteration allowed restoration, to a certain extent, of the indestructible link between a benefit, if it is contributively created, and the contribution basis levied upon; thus, in our opinion, it contributed, although in a limited way, to the conversion of “jobless growth” into “relatively job-rich growth” or plainly, economic growth which didn’t seem to generate jobs turned into economic growth which not only generated growth but also revealed a certain labour force deficit; in other words, from economic growth with labour demand deficit (a paradox for an economy with such a big development deficit like Romania) to economic growth with excess of labour demand.

It is hard to say if the new calculation formula for unemployment benefit by which the fix amount of 75% of the minimum salary was supplemented with a quota from the contribution basis, although not directly, like the contribution duration (already more direct, in this latter case) had a positive effect or not upon the relative increase of employment and activity between 2005-08. However, it is not difficult to see a reduction of unemployment rate, which shows in itself that the measure had an effect. Given the imperfect link with the basis and the duration of contribution, as well as the long period of time when this link had been annulled, we can conclude that there were rather some other factors that caused the positive effects on the labour market between 2005-2008; the effect of this measure was rather neutral or slightly positive.

In addition, it is obvious that even in this improved formula, the unemployment benefit can play the role of automatic stabilizer only to a certain limited extent. The few months of economic depression are a clear proof in this respect. Although unemployment rate in Romania is still one of the lowest in the European Union, it however doubled in less than one year from approx. 3%, a rate which showed, for the productivity of the Romanian economy at that moment, of course, the threshold of *full employment*, to

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over 6%; this double percentage contracted significantly the demand, especially the end-user component in households, which shows that, although unemployment is extremely low, the unemployment benefit in its current formula cannot play the role of automatic stabilizer, not even a modest one. At an average replacement rate estimated by the National Statistics Institute at approx 78% of the minimal salary, it is obvious that this social service, although contributively financed, therefore based on an ensuring principle, returns to the contributing beneficiary to an extent that is insignificant if compared to the contribution paid in; practically, it can only very little ensure transition towards a new job. In most cases, transition takes place towards inactivity, which means transition towards marginalisation, exclusion, and of course, towards undeclared labour, either domestic, or in countries that are destination for labour migration.

Consequently, the Romanian approach regarding transition on the labour market which are supported mainly by this unemployment benefit (the key in the Danish approach of flexi-security) and which is actually a key element of the entire concept of flexi-Security (a national model of flexi-Security cannot be conceived in the sense of encouraging transition towards inactivity) is faulty, in the best case. It is actually a new reflection of a propensity towards short-term pro-cyclic policies and ad-hoc approaches.

By linking the unemployment benefit, which in Romania is contributively financed, to the minimal salary and especially, by setting this unemployment benefit at a level which is below the minimum threshold of social desirability of the labour price, a stimulus for activity will be created; on the contrary, an inhibitor will be induced on the labour market which can only mean the opposite of flexibility, that is rigidity. Currently, the unemployment benefit, because of its weak link to the contribution paid in and implicitly to the basis of contribution on which the unemployment benefit was levied, is an element of rigidity of the labour market. It does not ensure short-term equilibrium (behavioural) but shatters it, which has an impact upon fundamental long-term equilibrium.

Consequently, instead of minimizing semi-depression time, during the active life of the individual, this fundamental element of the institutional structure of the labour market (and not only), in its current formula, manages the opposite: to shorten relative prosperity times and therefore the active life of an individual, that is the opposite of the objectives assumed through Lisbon Strategy. The impact upon fundamental long-term equilibriums is obvious. An individual with shorter active life cannot take advantage of the services of the pensions system, therefore of the long-term

component of social Security. One will be forced to penetrate the disability pension area, because of insufficient pensions upon attainment of normal retirement age, as a result of a duration of contribution much shorter, or to regress in the area of non-contributive social protection systems. In both cases, the wish to establish ad-hoc, narrow, accounting-type equilibrium, with which the state, in its capacity of main economic actor, operates in practice but not in its strategies and conceptualization, causes a behavioural or short-term disequilibrium (main transitions from unemployment towards inactivity) which in their turn will trigger fundamental disequilibrium for the social Security component by affecting the pensions schemes, both public and especially private. For the latter, financing under the circumstances of short-term distorted disequilibrium, therefore when the individuals who leave the labour market have little chance to return onto the labour market, at least not formally, to which we add the requirement for these schemes to accumulate assets by sharing with public schemes (proxy for formal), becomes an illusion or at least a possibility strictly restricted to the times of prosperity of the cycle. It is obvious for the unemployed individuals who precisely because of insufficient support to unemployment benefits cannot return to employment that they will incur interruptions in their durations of contribution into these schemes, interruptions that will mean radical cut down of the amounts accrued in national accounts. Thus, inhibition of possibilities to return onto the labour market by adopting a much too restrictive calculation formula for the unemployment benefit set the conditions for long-term disequilibrium and for steeper gradients of cycle, either ascending, or descending, also triggering increased volatility of the economic environment which renders the labour market rigid.

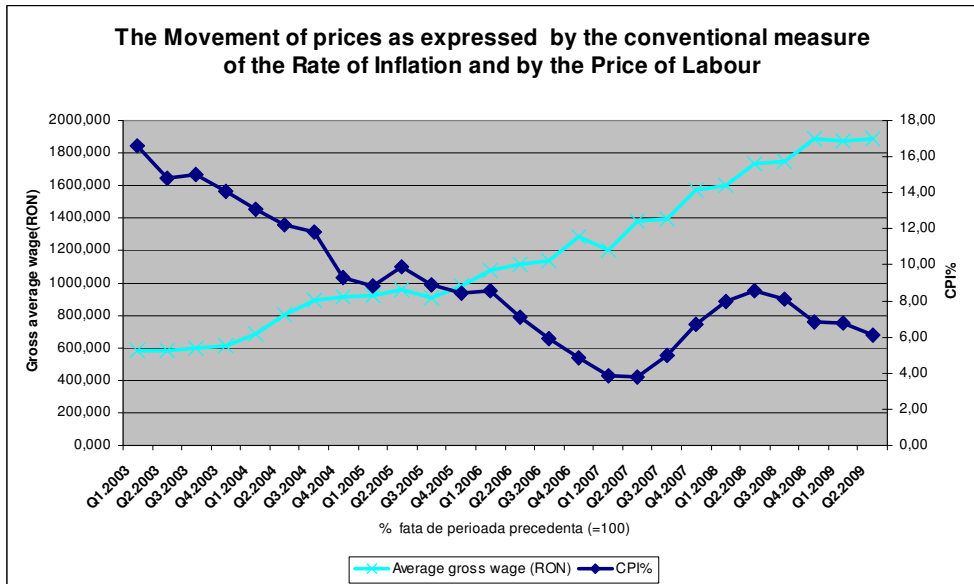
4.6. From the Great Moderation (1990-2007) to the Synchronised Recession (2007-); The response of the Romanian economy and market to the global economic crisis, role of Flexicurity- centred policies

A young contemporary Japanese-American economist, Richard Koo, author of an extremely interesting paper on the Big Depression of the '30s on similarities between that depression and the depression Japan has been going through since the beginning of the '90s, said that in such a phase of the economic cycle, the issue is “not to stimulate economy too much but to stimulate it too little”. In other words, if, during normal times, the role of the state can be minor, during exceptional times this role must grow since the state is both “the lender”, in Walter Bagehot’s understanding, and “the borrower of last resort” – that is, the state remains both the creditor and the

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debtor of last resort; its issuing of bonds in order to enable public expenditure later on is aimed, even with the price of sacrificing certain purely accounting equilibriums, as previously mentioned, and even with the risk of depreciation of the symbol itself of state sovereignty (“the currency”), at ensuring against a higher risk that is economic and social dissolution, more active than ever in such cases.

Chart no. 11



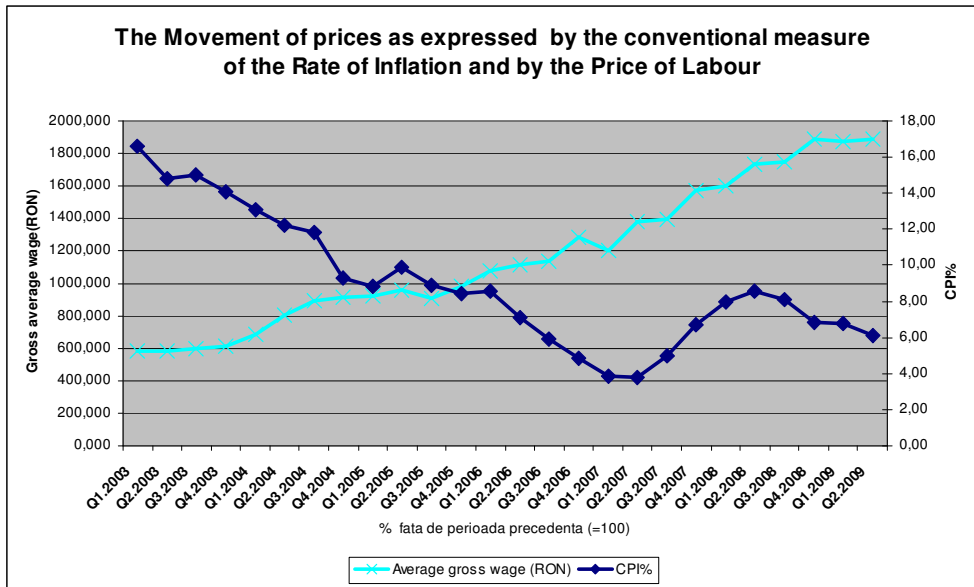
Flexicurity as a concept is not however a recession concept and neither a depression concept. It was created during the time of what Alan Greenspan called with a lot of inspiration “the great moderation”, a time of economic prosperity from the beginning of the '90s until mid 2007, characterized by economic growth and especially by unprecedented reduction of inflationist pressure, accompanied by reduction of the unemployment rates, in contradiction therefore with the theories elaborated in mid 20th century.

Is there flexicurity and its components, and the set of policies related thereof useful during crises? Can we still talk about flexicurity during unprecedented economic contraction, deflation and increased unemployment resulted from massive reduction of demand and prospective

inflation re-activated as a result of huge deficits contracted by states that are lenders and borrowers of the last resort?

YES, in our opinion. Flexicurity, although a concept attached to the time of great moderation (we shall analyse the European vocation of this concept in the last chapter of this book) is actually a very interesting summary, intrinsically flexible and open to continuous innovation of anti-cyclic policies; that is, to those policies which follow the Keynesian thesis of minimizing the periods of semi-depression and maximizing the periods of relative prosperity.

Chart no. 12



Actually, FlexiSecurity policies mean, from this point of view, minimization of discretionary economic stimuli during periods of economic growth, especially economic boom, in order to control formation of speculative bubbles and preparation of such conditions so that, during recession times and especially during depression, the action of the so-called automatic stabilizers should be consistent and decisive, to enable not necessarily recovery of accounting equilibrium but resuming economic growth; recovery of accounting equilibrium should be left for the growth time (post-recession).

Flexibilization of working relations, diversification of social security, promotion of life long learning and professional training,

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especially in companies, as well as maintaining the contribution rates into the public social Security/protection systems at highest levels during growth times ensure sterilization of the market by absorbing the excess of cash created during these times and by preventing salary increase above the conventional threshold of the sum productivity and inflation (beyond this threshold, salary increase develop inflationist pressure and amplify demand in a speculative manner, thus increasing the chance to create a random shock, either endogenous or exogenous, induced to the national economic mechanism). Thus, reserves are created for the inevitable recession periods, given the inherent cycle of any capitalist economy (recession is a necessary stage in order to clean the waste accumulated during the growth of the economic mechanism). These reserves accumulated in the social Security/protection systems, both public and private, allow automatic stabilization of the economy during recession and thus, maintain demand at an acceptable level. These resources also allow increasing of public budgets allocated to active employment measures/policies and professional training measures/policies as additional discretionary stimulate in order to shorten recession time and to resume faster economic growth; this takes place also during recession times. In other words, implementation of a flexicurity model ensures a national economy the possibility to moderate growth during growth times by absorbing excessive liquidity and by slowing down salary increase, accompanied by activating some large groups of population, and during recession, automatic stabilization of the demand through social protection services/benefits and by resuming growth through the use of a multiplier of public expenditure in a non-inflationist manner, appropriate to a market that is unique in Europe, a market where protectionism is no longer possible, at least, not directly.

The Romanian policies, which created what some authors call a Romanian model of flexi-Security, a statement that we do not agree with, had hardly an anti-cyclic character. On the contrary, as previously mentioned, they had an ad-hoc character aimed at maintaining accounting-type equilibriums of the state budgets and of the public social protection schemes, therefore highly pro-cyclic.

In addition, the policies designed and implemented made the state reduce its intervention during recession, by withdrawing or giving up its position as creditor and lender of last resort, while during economic growth, the state only increased the ascending gradient of the economic cycle by increasing liquidity in economy and by stimulating increase of salaries which re-activated the inflationist pressure and exhausted the resources of the social protection schemes (steep, continuous reduction of the

contribution rates) so that, when recession struck, they were no longer able to play the role of automatic stabilizers of the demand. In addition, the action taken during the last six-seven months bears the stamp of the same pro-cyclic approach. The economic stimulus applied was practically non-existent, the state withdrew from economy, which, corroborated with the withdrawal of companies and households, led to unprecedented contraction of the demand in the 1st quarter, a fact reflected in the disastrous fall of the GDP in the 2nd quarter of this year (2009).

To cite Richard Koo, precisely when the state didn't have to take action, therefore during economic growth, it did too much and it did wrong; when recession struck, it did too little thus continuing the wrong direction. In this context, we consider we cannot speak of a Romanian model of flexicurity, given the pro-cyclic character of the policies, which contradicts the essence of flexicurity as a concept – anti-cyclic; actually, we shall explain each major component of policy of flexicurity.

The first policy we shall analyse is the regulations on working relations. The Labour Code adopted in 2003, although it was obviously a step forward compared to the framework inherited from Communism, imperfectly, sometimes even naively amended during the transition from plan to market, induced a perception of generalized chaos, thus rendering the market rigid. However, the same Labour Code introduced high rigidity regarding the atypical forms of employment and especially contracts with determined duration. They were regulated as exceptions from the rule, which meant a rigidity factor on the market. Apart from the rigidity induced by the calculation formula for the unemployment benefit, presented *in extenso*, this new rigidity induced one year after the rigidity induced by Law 76/2002 (the Labour Code was adopted in 2003 in its initial version; however, regarding the contract with determined duration, no major changes in the sense of flexibilization) caused many employers to be reluctant in creating new jobs or creating new jobs in the unrecorded / unnoticed economy, a fact which can be easily proved if we take into account almost all estimations regarding the evolution of the undeclared labour in Romania (“*Undeclared World-UDW*”). This fact, cumulated with the extremely severe requirements to give unemployment benefits and with the fact that the Labour Code stipulates exclusively layoffs as requirement to give unemployment benefits (i.e. dismissal on grounds that are independent from the will of the employee), not the termination of working relations by mutual agreement of the parties (this would be a normal situation since the labour contract is based on the mutual agreement of the parties and the unemployment benefits systems is contributive; therefore, the individual has

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the right to ask for this service when a working relation terminates, either independent from one's will or by mutual agreement of the parties, which would flexibilize the market a lot), caused, (in most cases between 2000-2008, that is nine successive years of economic growth (in terms of a mature capitalist economy, it is a long time, for the Romanian economy and other economies from Eastern Europe, it is very short time, given the huge growth deficit accumulated between 1945-1989) the economic expansion not to be accompanied also by significant increase of employment rate or at least of activity rate, except for the last two-three years when the employment increase took place in the area of speculative services or constructions (also a speculative sector). At the same time – here is the pro-cyclic effect of a policy, which does not encourage flexible forms of employment and maintains inactivity or underground economy of large segments of labour force – these policies encouraged a salary increase, which, between 2001-2009 and especially between 2003-2009, constantly exceeded the sum of productivity increase and inflation rate. In other words, a policy of rigidity of transitions on the labour market, either from employment into unemployment, either from unemployment back into employment, encouraged and excessively stimulated expansion of demand, actually expansion of consumer loan after 2004. However, the effects of this policy were partially compensated by the salary dynamics, as it is noticeable in terms of gross average salary per economy, which started from very low at the beginning of this decade. Although increases from one period to another (e.g. from one quarter to another) may seem significant in their relative value, over the entire period of time, salary increase remain below the trend and progress in strict correlation with productivity progress; salaries exceed productivity only in 2007 and the first two quarters of 2008.

Practically, in nominal value, salaries remain low, especially compared to the European average, which means that Romanian economy keeps this competitive advantage; on the other hand, we cannot say that this policy, although obviously pro-cyclic – blocking of the access to the labour market and difficult transitions determined obvious advantages for the *insiders* who could put pressure to get increases salaries, higher maybe than sustainable ones, given the productivity increase – wouldn't have been partially annulled by intrinsic features of Romania labour force. However, it stands for an obvious example of ad-hoc, short-term policy without taking into account mid-term and long-term effects and which increased the ascending gradient of the cycle and gave economic growth a strongly speculative and unsustainable character.

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If this first policy or example of policy was somehow annulled by the “effect of initial conditions”, the second policy, regarding the contributive load on the labour factor could not be annulled and its consequences will be unfortunately obvious in the future.

The Government that came to power in 2005 took the first measure to enforce a unique tax rate, extended by 01.01.2006 to all categories of income. This measure was a real revolution in the area of economic policies as it de-blocked the fiscal multiplier of the Romania economy and allowed expansion of domestic demand, which generated increased state revenue over the four years of the Government run by the liberal C. P. Tariceanu. However, once this measure implemented, it should have blocked any other further fiscal relaxation and contributive measures in excessive use of fiscal multiplier leads to over-heating of economy, therefore to development of speculative excesses, especially if it takes place on a background of global economic growth. Of course, we can argue, reasonably to a certain extent, that Romanian economy has needed economic growth, as accelerated as possible, and for as many successive years as possible. However, this growth should not cause reduction of the assets of the public social protection schemes because, no matter how long it may last, it will eventually end. Since Romanian economy is not able yet to generate economic cycles endogenously, so it cannot be effectively controlled through macro-economic national policies, or at least, not only through these policies, it is obvious that this cyclicity can be only induced exogenously under the violent form of a random exogenous shock. Hence, the increased need of prudence in managing the budgets of automatic stabilizers than in mature economies. In this context, continuous and relatively significant reductions of the contribution rates to public social insurance schemes, pensions and unemployment, accompanied by divide of the individual contribution rate to the public pension scheme, can only make all of these stabilizers vulnerable and severely weaken their strength.

Moreover, it is obvious that successive reductions of the contribution rate of social insurance led to the release of additional liquidity in an economy already overheated and having an underdeveloped internal market (able to meet only a small part of the growing demand through its own supply), which generated gradual loss of external competitiveness through increased disequilibrium of the balance of payments. However, this is not the worst aspect; it was normal for an economy with deficit of development; the worst is that, through hasty measures, action was taken precisely when no action should have been taken. Consequently, important resources were wasted; they could have been used when there was a real need. If

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contribution rates hadn't been so radically reduced during prosperity times, there would have been no need to increase these rates precisely at the most unfavourable time, in January 2009, when global recession was most severe and Romanian economy did not need an inhibitor but a stimulus. Moreover, when the action of automatic stabilizers (Security component) has been needed in the Romanian economy, and this is the case at present as well, these stabilizers were weak. In other words, when too much action was taken when there was no need, in an attempt to create jobs that economy could not have generated because of inhibitors induced by the Labour Code and the Law on Employment Benefits, there were no longer resources to act when there was a desperate need. Thus, a pro-cyclic policy which didn't manage to generate Flexibility during growth time and to create conditions for Security during recession, triggered another pro-cyclic policy (increased contributions and taxes during recession only means a stronger contraction of demand which increases the gradient of recession and delays the moment of recovery) whose consequences can be devastating in the next years.

Because of this unhappy mix, conceived without taking into account the inherent cycle of capitalist economies and especially of an emerging, open and small capitalist economy, like the Romanian one, we cannot say that Romania has, at the moment, a national flexicurity model, not even a rudimentary one; simply because this model implies an anti-cyclic action not a pro-cyclic one. Unfortunately, Romania still has to make this effort. It is worth trying because, as F. D. Roosevelt said, "no plague has stricken... what we have to defeat is our own lack of trust and weakness"; in the terms of the European document dedicated to anti-crisis measures to be taken by Member States, this can be translated by "bold action"; in the current global situation, the risk is no longer temporary rigidity of the market or long-term reduction of sustainability of social protection systems but economic dissolution and eventually, dissolution of the state. This is a real risk and it must not be underestimated.

4.7. The coming of age of social dialogue in Romania – participation and confrontation¹¹⁵

Participation is a key component to human development as understood and promoted by UNDP; all members of society should have the opportunity to participate to development (*development through people*). All

¹¹⁵ This paragraph was the contribution of Ms Magdalena Cismigiu, PhD candidate, Scientific Researcher with the National Institute for Scientific Research for Labour and Social Protection (INCSMPS); the author of this book gives her special thanks.

members of society should express their opinion about the decision-making process that affects their life, as a human fundamental right as materialization of human development. The mechanisms through which people can influence are very different: as individuals, they can vote or be entrepreneurs; as groups, they can associate in unions or other various NGOs. It is very important that participation allows revealing of the women's capacities and create conditions for gender-sensitive development.

For a long time, reports on human development concluded that many obstacles that prevent achieving global objectives of human development are related to inappropriate governance. Participation is one principle of good governance since it is an important component of an inclusive democratic society that ensures sustainable human development. Quality, relevance and efficacy of the state policies depend on a large participation in the whole political process, from initiative to implementation. Better participation and implication will create trust in the final results and in the institutions that implement the political measures. Participation crucially depends on the way central government adopts an inclusive approach when it develops and implements EU policies or national policies.

In order to increase inclusion of labour market, it becomes essential to create a culture of participation of individuals and partnership of social actors. In a cohesive society, in which individuals take part in social processes and they are integrated in terms of value, there is trust, tolerance and reciprocity; from the operational point of view, there is involvement and commitment in social organisations and in the political life of the community. Socially, there is a strong network of socio-political associations and organisations.

In Romania, participation of individuals in the socio-political life bears the mark of the historical context. During Communism, lack of trust, fear and institutional rigidity were promoted. Society was fragmented and the relational network was restricted to one's own family while relationships between families or larger groups were „risky”. Civic participation under control of the state was not real participation. We can therefore state that Romanians do not have a culture of participation in social and political life. There were no real opportunities or institutional framework to ensure participation either.

After 1989, when democratic mechanisms appeared in Romania, a new infrastructure and new opportunities for participation were needed. The new legislative and institutional framework was created in order to ensure the citizens participation in the community life because they have the right and the duty to influence political and social decisions of public interest.

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Social dialogue – Major participative mechanism on the labour market

Participation of representatives of unions an entrepreneurial association, together with representatives of governments in shaping economic and social policies with direct impact upon the labour market and companies is vital for the stability of society and economic competitiveness.

Social dialogue plays an essential role in sustainable human development; it is an approach that places people in the centre of all development activities. Its main purpose is to create an environment where all people should enjoy secured and creative existence.

In Romania, during the last decade, the successive governments took measures to implement an industrial relation system that should be strong and healthy and protective of the principle of freedom of association and the right to participate in collective bargaining, for the reform of the legislative framework and creation of social dialogue institutions. There are still problems that prevent the appropriate social dialogue, that have to do with the legislative framework, inefficacy of social dialogue institutions and lack of experience of social partners.

Short history of social dialogue in Romania

Social dialogue in Romania was attested for the first time in documents in 1827, when the Prince of the Romanian State (“*Domnitorul Tarii Românești*”) annulled some strikes in which miners from the salt mines were involved. The first unions were mentioned around 1860. The General Association of the Romanian Workers was set up in 1872, and the Society of Romanian Ploughmen in 1898. The General Association of Romanian Unions was set up in 1907, with separate structures for women and youth.

The first Romanian unions were strongly influenced by Marxist thinking and Socialist parties. They co-existed with professional associations and corporative bodies (organisations including both employees and employers)

After the 1st World War, the Government and the unions initiated a dialogue in order to regulate relations between employees and employers; the main issue under debate was the collective labour conflicts. UGIR, the first Romanian entrepreneurial confederation, was set up in 1903 and became one of the most important entrepreneurial associations in Europe; it had a remarkable institutional capability. This organisation had a huge influence in the Romanian political environment; it contributed to the

elaboration of a number of laws and development of institutions: Code of the Customs, Law of Industry (providing support for industrial development), Consortium for Trade and Industrial Credit. UGIR was abolished and all its assets abusively confiscated by the Communist Regime in 1948¹¹⁶.

During Communism, each employee had to be union member and the union was entirely subordinated to the Communist Party. The union had no role to protect the rights of the employees. Its activity was restricted to implementation of the decisions of the Party, closely connected to the production plans, propaganda, ideology and so on.

After 1989, unions were set up in each Romanian company; the trust and participation of Romanian employee were huge and unconditioned. It was a big challenge for the newly born union movement. Given the economic changes and social tensions, there were many vivid claims from the unions. Many times, the “dialogue” with authorities took place in the streets and the will of the unions could not be neglected. In 1991, 27 union confederations were negotiating the national Collective Bargaining Labour Contract with the government. During these first years, there were practically only two partners in the dialogue and negotiation, at the national level and per sector: the unions and the government; there were no entrepreneurial organisations.

Since 1995, the Romanian union movement was translated into an institutional framework, from protest to participation. The institutional and legislative frameworks were improved significantly. New institutions for social dialogue were set up (Economic and Social Council, Commissions for Social Dialogue, National Agency for Employment and Professional Training) and new legislation appeared (Law on collective bargaining contract, law on labour conflicts).

Appropriate representativity was a major prerequisite for participation. In 1996, the Law on collective bargaining contract defined the representativity criteria according to which representatives of union and entrepreneurial organisations can take part legally, efficiently and constructively in decision-taking and forming of opinions. Unfortunately, following the collective massive dismissals and restructuring, the number of employees radically diminished, causing also diminished number of union members. This was confirmed by the census in 1997. In addition, in 10

¹¹⁶ Georgeta Ghebrea, *Social dialogue in Romania: from a forgotten tradition to a renewed practice*.

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years, the number of union members decreased by more than a half, from 90% in 1990 to 44% in 2002).

In 2001, 2002 and 2004, 5 unions and 10 entrepreneurial organisations with national representation and the government signed a Social Agreement to support reform, employment policies and laws with social impact in order to ensure social peace and stability. Once regulated the labour relations and social dialogue, the number of labour conflicts significantly decreased (from 324 labour conflicts in 1993, to 79 in 2004).

The Romanian social dialogue advanced from a random, protest , hardly organized movement to a focused, participative movement, organized according to legislative regulations in an institutionalized way, in compliance with European principles.

There are many regulations protecting the labour relations but the fundamental act is the Labour Code, which defines the general minimal requirements for the relations between the actors on the labour market. After three years of negotiations between social partners, the new Labour Code entered into force on 1 March 2003. It was an important step forward to harmonize labour relations with EU standards. The Labour Code also guaranteed more power to the social partners by regulating aspects regarding social policies through collective contracts; the debates took place between unions and entrepreneurs' organisations; the government was involved only at the stage when the law was adopted, to take responsibility in front of the Parliament. The Labour Code was adopted in the form agreed upon by the social partners as a result of negotiation. The Romanian Labour Code therefore is mainly the result of agreement between social partners; the social dialogue had an essential role in negotiations. This success of social partners in social dialogue and labour relations meant an exam of democratic maturity, which proved the ability of social partners to take part as responsible actors in governance. The decisions with impact upon labour relations taken at the level of decentralised administration give social partners the chance to get involved in the coordination of social policies in: employment, professional training, social insurance and social assistance.

All this proves that the Romanian social dialogue has the potential to participate in solving important economic and social problems, thus encouraging good governance and ensuring social stability and peace, as fundamental requirements for sustainable human development.

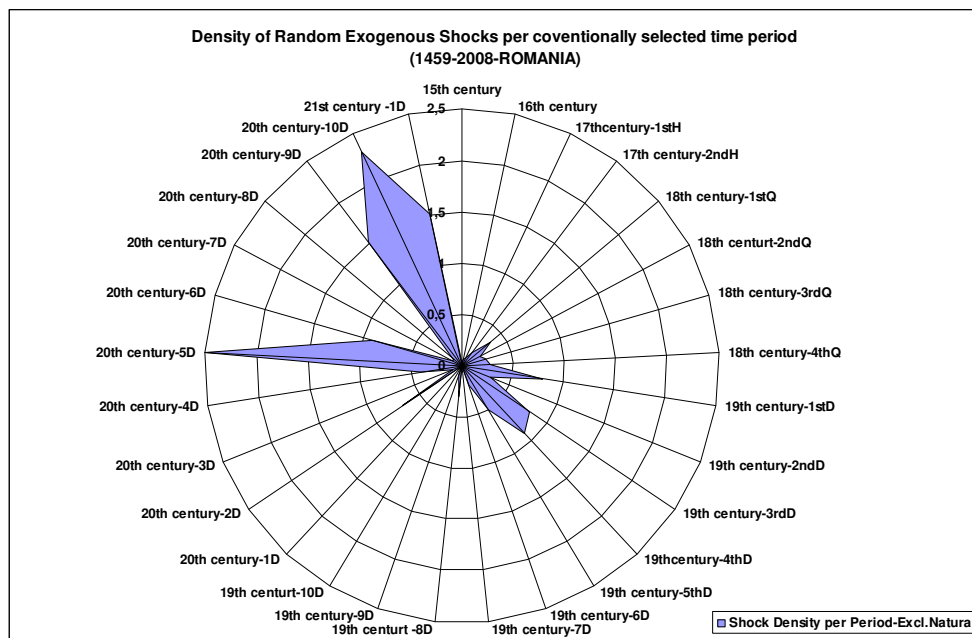
Chapter 5. TOWARDS A ROMANIAN FLEXI(SE)CURITY MODEL IN AN INTEGRATED EUROPEAN ECONOMY

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5.1. Flexi(se)curity, human development, European integration and Convergence – “the Golden rectangle” in a Romanian approach

The story goes that in the summer of 1914, shortly after WW-I had erupted, Take Ionescu, a visionary political man and forerunner of the idea of European unity, said these prophetic words: ”Millions of people will die; we shall go from one crisis into another...our generation will not see better days again ... but we shall see the Greater Romania”. It has happened so indeed!

Chart no. 13

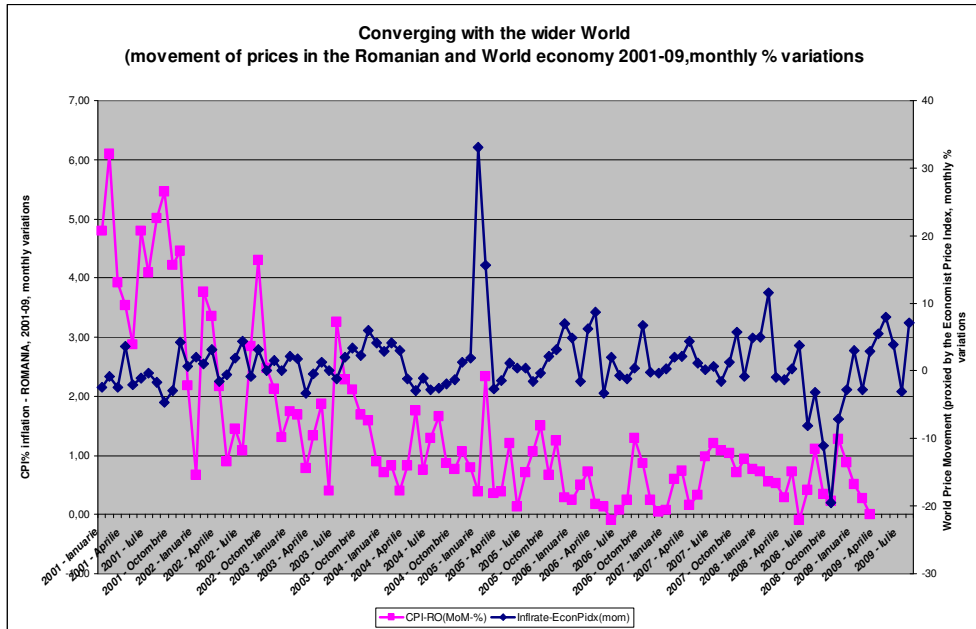


If Take Ionescu had lived in 1989-90, he would have said the same words except for the conclusion, “We shall see Romania in the European Union”. It has indeed happened so; the 1989 generation brought Romania in the European Union sooner than 20 years after the fall of Communism in

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Eastern Europe and Romania. 1st January 2007 meant the victory of an idea, of a legitimate national aspiration, of a large national project that will bear a historical mark from now on.

Chart no. 14



In our opinion, Romania’s integration in the EU, as a 14 year process, since the association agreement in 1993, through Helsinki in 1999 when Romania was officially invited to join the EU and eventually the years 2004, 2005 and 2007 when the process was completed, facilitated the overall integration of the Romanian economy and society into the mainstream of the global economy. The statistical data on the main macro-aggregates like yearly variation of GDP and price variation, even imperfectly expressed through the index of consumption prices (ICP), show that, during these years, the Romanian economy started to converge with the global economy; this process was of course facilitated by the extraordinary economic growth between 1990-2007/08 and by the huge effort to reform domestic economy between 1997-2004 which, in our opinion, would have been much slower and less beneficial to the Romanian citizens if it had not taken place at the same time with the European integration, therefore closely associated thereof.

However, apart from these positive developments, the failure of the Romanian economy to cope with a globally synchronized recession which has all the features of a global economic depression already known by the capitalist system from the years 1929-33/41, shows that the Romanian economy, whose structure is the result of the transition from Plan to Market, is still a vulnerable structure and somehow unable to resist random exogenous shocks which are not the exception but the rule in a globalised economy.

Moreover, like most economies in Central and Eastern Europe, the Romanian economy was not actually ready to join the European Union; it can hardly cope with the competitive pressure on the EU market and can take very little advantage of its capacity of member of the most exclusivist economic and political club of today's world. Indeed, Romania's degraded economic, social and political position, as well as of the other CEE states, except for Russia which still dominates because of its status of big global power, was obvious at the beginning of this year when no CEE state was invited to London to the conference of the most important global economies. 75 years ago, when the same conference was held in London on the topic of the economic crisis that was visible in the world at that time, without participation of the president of the USA, the Romanian delegation as well as all the Eastern Europe countries were present and had significant contributions. This fact shows that Romania, recently escaped from Communism, after having gone through transition and accession, is still a state with weak institutions, a weakened economy, a declining population and limited capability to participate in the European and global economic and political concert.

The issue of a national FlexiSecurity model should be approached from this perspective. Currently, it is a fragmented and rudimentary structure. Its strongest and, at least before the crisis, best structured component is Security. The successive reforms, especially the reform of the pensions systems, resulted into a diverse system on three pillars, out of which two are compulsory and one is optional. All pillars have contributive financing therefore they encourage the responsibility of the individual and corporations, but also imply a stronger role of the public power as a guarantor of good operation, sustainability and strength. The services provided by the public system, the only one that gives benefits at this moment, have been closely correlated with the contributions levied during the entire active life and these contributions have been correlated in their turn with the contributions bases. Briefly, these systems encourage a labour approach from the perspective of the entire active life of an individual, if not

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even biological life; it encourages activity, employment, promotions in careers, therefore implicitly, continuous learning and professional training processes.

Unfortunately, their characteristics are not enough known by their beneficiaries themselves, the Romanian population that are still prisoners of distorted mentalities and perceptions of reality in which traces of Communism combine with an inaccurate knowledge of realities and of the operational rules typical of the capitalist economy. This happens also with the political decisions and results into implementation of *ad-hoc*, pro-cyclic policies whose effects upon certain systems that need long term stability may be disastrous. Consequently, even with this component where progress is visible, it is still reversible, which jeopardizes the strength of the only pillar really well structured of what we could call the Romanian flexiSecurity model.

The evolution of the unemployment benefit systems unfortunately has been marked by excessive volatility. The current system does not encourage transition from unemployment into employment, reconversion and return to the labour market. Because of the calculation formula of the benefit, which involves no link between contribution and benefits and because of the errors made by repeated and massive reduction of the contribution rates, we cannot say at the moment that this subcomponent of the Security component of the concept is indeed operational. It works rather like an undercover social assistance system whose role seems to be to eject the surplus of labour force into inactivity or unregistered / unnoticed economy. A reorganisation of the system is absolutely needed, in the sense of a clear and explicit link between benefit and contribution. Such a reorganisation should have been done during the years of economic growth between 2004-2007. It may be too late now.

The active policies on the labour market are unfortunately another weak point of the Romanian model; they reflect its fragmentary and rudimentary nature and the lack of a real debate regarding flexicurity until two-three years ago. Practically, the entire range of active policies promoted on the labour market, which can be found mainly in one normative act -Law 76/2002 with further modifications and completions-, is nothing else but a relic of the transition from Plan to Market; many of them are not accessed by those who should access them; many of them are only formally enforced by the Public Employment Services. There is of course an objective motivation. Right after the adoption of this law, there was a time of strong economic growth and decreasing unemployment. Consequently, the need of active measures was less acute. However, several analysts revealed in their

analyses that it would have been exactly the right time to re-design a system whose unique purpose was to treat the massive layoffs resulting from the restructuring of big public companies. Once this process was already completed on the date when the law was adopted, the active measures should have been reoriented so that they should have been addressable to individuals, small groups of people, disadvantaged communities, small entrepreneurs. Instead of this innovating approach, stagnation was preferred so that economic crisis came by surprise and found the unemployment insurance system not only under-financed but conceptually unprepared to face challenges.

That is why, in our opinion, this component urgently needs deep restructuring. The budget for active measures should be separated from the budget of unemployment insurance and transferred to local and county authorities as they really know the situation on the labour market and therefore, they can, through cooperation with the local business environment and local social partners, guide these activities and creatively adapt local needs.

The continuous professional training and life long learning component, although considered the weakest of the Romanian flexi-security arrangement, in time, proved to be the most dynamic one; it managed best to take advantage of the accelerated economic growth in Romania between 2001-2008. The latest statistical data, although only partially comparable to the enquiries conducted in 1999 and 2005, show an impressive development of this activity in its formal, informal and non-formal components. By using the legal flexible framework, even advanced, from a certain point of view, especially in terms of partial qualifications per modules, recognition of qualifications obtained through non-formal education, etc, an industry of adult professional training developed; if not the companies, at least the individuals proved that they were what we could call “keen learners” – eager to be exposed to higher education and to learn. This development of an essential component, and of the whole approach regarding flexi-Security, shows that on the Romanian labour market, under the specific circumstances, the most active agent has been the individual, not necessarily the company; hence, the significant progress incurred over the last years; hence, the need to create the necessary conditions so that individuals could be stimulated further on to learn and contribute to flexibilization of the supply, also through a system of professional training vouchers which should be integrated into the system of unemployment insurance.

Finally, the weakest link of the approach is obviously the one regarding the working relations and especially the labour contracts with

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determined duration for which the Romanian legislation is incomplete as it only provides a minimal degree of Flexibility. These regulations practically block the labour market and favour significant increase of salaries during economic growth and rapid increase of unemployment during economic regression while the unemployment benefits system is weak and is the certain way towards inactivity and undeclared work. That is why a reviewing of the Labour Code is absolutely imperative. It may also become a logical consequence of the extremely unfavourable current situation of the Romanian economy.

Briefly, we can say that the main features of what we can call a rudimentary national model of flexiSecurity are:

- A pensions system conceptually well structured however undermined in practice by many pro-cyclic policies affecting both the adequacy of benefits in the future and especially the sustainability and the robustness of the system. This insecurity regarding the long term evolution of the Security component undermines any attempt to achieve policies with a *life-time approach to work*;

- An unemployment benefits system that does not encourage transitions from unemployment into employment, has a weak link to the contribution basis although it has a contributive financing, mainly, and cannot play the role of automatic stabilizer during crises;

- A range of active measures that are inappropriate for an emerging market economy, with a rigid central management, with no involvement of local and regional actors which already proved their inefficiency and lack of attractiveness;

- A developed and dynamic professional training system, focused on the individual and on individual effort which needs innovative forms and methods as support from the public power, with a high potential to play the role of automatic stabilizer during crises/inversion of the economic cycle;

- A very rigid regulation of the labour contracts with determined duration and of the atypical contracts which render the market most rigid and generates in itself a steeper gradient, either ascending or descending, of the economic cycle;

- Institutional arrangements regarding collective dismissals copied after the European practice in the field and complying with the minimal European regulations in the field. Although rigid as procedures, in their essence, they are enough flexible; the provisions regarding financial compensations are left to the social partners.

We conclude therefore, that, although significant progress has been achieved during these twenty years of economic liberalization and European integration, the Romanian economy and labour market haven't managed to create what we could call a national model of flexicurity or the social dialogue in this respect; the current arrangements have very little flexibility, on the one hand; on the other hand, they still provide an insufficient degree of Security. All this contributes to the vulnerability of the Romanian economy that became visible once the global economic crisis began during this second Biggest Depression of the contemporary capitalism.

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The global economic crisis whose signals appeared during the 3rd quarter of 2007, became acute during the last quarter of 2007 and became visible in the advanced economies of the EU in the middle of the 2nd quarter of 2008, and finally it violently burst (*contagion* as a result of metastatic leaps¹¹⁷) during the last quarter of 2008, unfortunately found the Romanian economy incompletely recovered after the 45 years of centralised planning and after 10 years of necessary adjustment of the Transition from Plan to Market. Afterwards, although the Romanian economy had accumulated nine consecutive years of economic growth, with rates much above what we may call economic growth potential (positive *output gap*), when the violent global crisis outburst (September 2008), it was still excessively vulnerable because of its poor structure in terms of fields and sectors of activity, its excessive commercial openness and its dependency on extremely volatile exports towards advanced European countries and because of the insufficient development of the domestic market which was unable to compensate the fall of export markets (contraction of the demand).

The policies applied in the last quarter of 2008, although relatively incoherent, managed to maintain a certain economic discretionary stimulus

¹¹⁷ The analogy between epidemics and economic depressions or synchronized recession is very interesting here. They propagate like epidemics, and give the contagion to economic mechanisms and acts in leaps, so called metastatic leaps, and affect firstly the very open economies, therefore most vulnerable. The analogy with the Medieval epidemics and especially the bubonic plague is very interesting as well (plague spread by the black rat; for instance the Great Plague in 1346-1353 killed over 60-70% of the population in Europe) which were spreading along the trade roads; the first affected were the harbour cities and cities along the trade roads; however, the smallest communities (analogy with the smallest economies) were most affected if they were placed along a trade road (they were open/openness to trade).

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in economy; however, the budget deficit of over 5% of the GDP was reflected at the end of 2008 in the Romanian economy with an increase of 3% compared to the same period of the previous year while globally, there was an economic contraction of equal magnitude (-3%). The attempt made by the Government run by Prime Minister Emil Boc to repair budgetary balance right at the moment when globally, the contraction of the demand was at its peak and households and Romanian companies were withdrawing from the market, retrenching themselves, in order to save resources to pay the current liabilities, as a result of the sudden fall of the assets value (so called concept of “balance sheet” recession) actually resulted into withdrawal from the market of the last actor which could still save the situation: the state. The sudden withdrawal of the state during the first semester of this year, reflected by end-user consumption cuts and final collective consumption of the public administrations (especially 1st quarter of 2008, the quarter unanimously seen as the most difficult during the global crisis) and reduction of the budget deficit at the end of 1st semester of 2008, tantamount to only 2,8% of GDP, triggered a deeper economic recession in Romania, a fall of the output over 7% during the 1st semester of 2009 compared to the same period of time in 2008, which places the Romanian economy close to the Baltic economies; these countries which cannot use the exchange rate as a cheap instrument to reduce disequilibrium of the balance of payments (foreign competitiveness). These developments drastically reduced the employment rate and the activity rate, required the adoption of a restrictive law of the salaries in the public sector whose medium term consequences were to contract the aggregated demand and eventually caused a double rate of unemployment from a rate which corresponded practically to full employment for the productivity rate of the Romanian economy at that moment. The lack of a discretionary stimulus during the 1st quarter of the most difficult year of global crisis turned some policies, which were meant to be anti-cyclic, into pro-cyclic policies which rendered even steeper the descending gradient of the economic cycle in Romania and pushed economy deeper into recession and exhausted the public revenue.

In this context, although global economy shows signs of recovery, including QE *quantitative easing*, as a result of discretionary economic stimuli, and according to our estimation, the evolution of the Romanian economy during the last two years practically “shadowed”, with 2-3 quarters behind, the evolution of the global economy, it is likely that the economic recovery in Romania may be much slower, involving the risk of a disequilibrium of public finance that may need consolidation of the

sovereign currency. This will seriously affect foreign competitiveness and will certainly delay the convergence programmes with at least 3-5 years.

Two scenarios are likely from this point of view and they may influence the medium term and long term Agenda of flexi-security in Romania, the creation of a Romanian model of flexi-Security, placed in what may represent an European post-crisis view.

- **The First Scenario**, pessimistic, assumes that, because of disequilibrium accumulated during 2009 and wrong decisions of economic policy in the 1st quarter, a consolidation of the sovereign debt will be needed in 2010, resulting into significant loss of foreign competitiveness. In this scenario, we shall witness a deflationist adjustment policy, focused on the keeping under control of the aggregated demand, especially by promoting restrictive fiscal policies and salary freeze. On the labour market, the effect will be unemployment rates maintained high and high inactivity rates. This will be the price paid to maintain a relative stability of the exchange rate, to prevent “flight” of capital and total loan freeze and maintains a minimal operation of the state (possibly with interruptions). This scenario implies an enhanced Flexibility dimension for flexi-security as a result of the job crisis and dilution of the Security component with potential drastic reduction of its public managed component, without being necessarily compensated by the private component. Despite the austerity programme, we think that, even in this scenario, EURO cannot be adopted earlier than 2016-17; time is needed to achieve total consolidation of the sovereign debt and to re-ensure macro-economic equilibrium;

- **The Second Scenario**, euphemistically called, optimistic, would imply that at the middle of next year, an economic revival would take place in the “trailing” of the global economic revival, if this is confirmed and it stays sustainable, which would imply a more relaxed behaviour. However, in this scenario as well, the social Security component should be maintained diluted, salaries should incur only slight increase and employment should stay at the same level. Under these circumstances, a flexibilization of the labour market may occur, very slight, since the position of the insiders would stay strong on an anaemic market that may preserve a lot of inactivity. Retrenching of the Security component would increase even more the attraction of illegal forms of labour, which would automatically increase rigidity and annul any increased Flexibility that may result from relaxation of regulations on labour contracts of collective dismissals.

In both scenarios however, the active policies would be operated at a low level as a result of the need to preserve budgetary resources and the policies to encourage professional training would be limited. Practically, the

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effort in the area of professional training would still pertain to individuals. The current pattern would therefore continue.

It is currently difficult to foresee another evolution, except for the case where very bold policies would be adopted and the policy of rigid equilibriums would be given up, not without risks, of course. Actually, the creation of the national flexicurity model in the near future that is by 2015 crucially depends on the adoption of policies, which, at least incrementally, should give up the prevalent orthodoxy existing before the crisis, in order to reveal its considerable national economic potential.

From this point of view, we shall structure the Future Agenda of Flexi-Security in Romania along two chronological expectations:

- Medium term expectations, called AGENDA 2015-2020;
- Long-term expectations, called AGENDA 2030.

5.2. Designing short-term and long-term Flexi(se)curity – AGENDA 2015-20

FLEXI (SE)CURITY, SOCIAL DIALOGUE AND CONVERGENCE

1. The purpose of the economic policies in this agenda will have to be Romania's accession into Euro-Zone, according to the Accession Treaty but without jeopardizing the already low economic competitiveness;

2. In this context, the adoption of a Flexi(se)curity Roadmap as an instrument to counter cyclical movements and support sustainability is highly needed. The designing and the implementation of this instrument should take into account also the need that economy should not enter the Eurozone in a minimal equilibrium (0), in which $GDP_{(t)} = GDP_{(t=1)}(1-S-R)$; or in other words, in which GDP, upon entering the Euro-Zone (GDP_t), should be equal to the GDP before the recession ($GDP_{t=1}$), as a result of the reduction to zero of the possibility of households to save ($S=0$) and of the possibility of companies to invest or, on the contrary, to access loans and return them ($R=0$). Such a state would mean that the national economy, although balanced, would not be able to take advantage of the Euro-Zone (adoption of the unique currency would be artificial, like in Montenegro or Kosovo, countries that operate with Euro without taking advantage of it, except for very marginal aspects);

3. This instrument will have first to operate a large scale and radical flexibilization (*one-time*) of the contractual relations on the labour market by eliminating all restrictions regarding employment with determined duration, more relaxed procedures for collective dismissals and acceptance

of contractual relations based on forms of agreement of the parties other than the typical labour contract;

4. The second element will have to be related to the gross minimum guaranteed salary. The artificial link between this salary and productivity, that is the gross average salary, has to be removed or loosened so that this institution of the labour market should be given its real role minimal threshold of social desirability, established per field of activity through agreement of social partners, with no involvement of the Government, except, of course, for the public sector. However, given the conditions prevalent by 2015-17 when the Eurozone will probably be entered (starting from the assumption of a useful postponing of the initial deadline as a result of the effects of the economic depression), the current relatively rigid mechanism based on national negotiation will have to stay in place. Otherwise, there will be a risk that the forces on the market will act to reach a minimal equilibrium (the famous “invisible hand” of Adam Smith can act in the opposite direction). Consequently, the minimal salary established by the Government, in its capacity of central authority, in normative acts that are compulsory for the entire national economy, plays the role of substitute of discretionary stimulus, like in the expanded relation $GDP_t = GDP_{(t=1)} \prod (1 - S - R + G + Ex)$, in which G is the discretionary governmental stimulus (public expenditure) which, if it cannot be directly achieved, it can be achieved through a proxy, like imposing of a certain minimal salary so that the saving capacity of households should not reach zero and because of lack of demand, a significant number of companies should stop investments, if the purpose is re-balancing of the trade balance (balance close to zero, $Ex \approx 0$) as part of the reduction of vulnerability to cyclicity;

5. The unemployment benefit or unemployment insurance will definitely have to be linked to the contribution, and the eligibility requirements will have to be relaxed so that to include also the unemployment benefit in case of termination of working relations as a result of mutual consent of the parties, if the conditions for a minimal duration of contribution are met. Thus, a strong rigidity of the market, preventing transition from unemployment into employment and facilitating transition from unemployment into inactivity would be removed. The replacement rate will have to be linked not to the minimal salary but to the contribution basis of the insured individual by promoting a calculation formula similar to the one used for the pension system (based on points);

6. Encouraging of the personal initiative in professional training also by promoting a system of professional training vouchers, accessible to individuals during their unemployment and of a system of fiscal incentives

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for companies that shouldn't be provide subsidies like now but fiscal easing (taxes, not contributions to social insurance) , applicable to the money invested in the professional training of the staff. This facility should be limited to certain companies and fields of activity seen as priorities for the reduction of vulnerability to cyclicity so that the public revenue shouldn't be unreasonably eroded;

7. The contributions to the public social insurance schemes will have to be consolidated, especially by removing the mechanism that divides contributions into private pension schemes and by introducing a mechanism to supplement contributions. An increase of the contributions rates as we approach 2015 would be desirable in order to ensure sustainability and strength of the system and to keep a close link between contributions and benefits (pensions, in this case), in order to preserve the labour force in formal networks and to promote a lifelong work approach. In this context, removal of non-contributive categories from the system is needed, as well as re-creation of the link between the pension point and the indexation of the pension point with the contribution basis as a guarantee of a permanent increasing of the formal nature of the employment. However, we have to state that any increase of the contribution rate or removal of the current mechanism of divide of the contribution rate will have to wait until economy regains equilibrium in order to avoid pushing up of the deflationist spiral. Only after adopting Euro we shall be able to speak about a real consolidation of the social protection schemes, both public and private. In our opinion, the moratorium on the contribution rate to private schemes should be preserved until budgetary re-balancing id re-gained and foreign competitiveness is recovered (re-balancing of the balance of payments);

8. Finally, the Unitary Law on Salaries will probably have to be amended in such a radical way so that to gradually enable a higher amplitude of the salary scale that should not jeopardize the contribution bases of the employees in the public sector, and not induce a gradual reduction of the pension schemes assets, even when liabilities have become relatively stable as a result of the indexation mechanism linked to inflation (inflation rate).

Such a model that would combine increased Flexibility with consolidated Security, moderate in its generosity, would be the ideal formula for the two macro-economic scenarios mentioned before. By increasing flexibility and especially by flexibilization of the gross minimum guaranteed salary ,a strong moderation of salary pressures would be ensured, combined with increased mobility on the labour market; at the same time, the role of the unemployment benefit as automatic stabilizer

would be enhanced. The amendment of the institutional framework, in the sense of abrogation of the provisions on the divide of the contribution rate and the introduction of a supplement for this in order to create the assets for private funds with DC, would result into strengthened sustainability and strength of the public pension scheme which would reduce the risk that, during periods of reversed economic cycle, the state budget should need to allocate valuable resources to support this scheme. The growth rate of the liabilities of this scheme would be thus directly correlated with the assets creation rate, which would reduce the general vulnerability of the public finance and strengthen foreign competitiveness. This would only confirm the need to ensure sustainability of the economy and to reduce the risks of new budgetary disequilibrium which in itself would significantly strengthen the capacity to enforce pro-cyclic policies when needed (in principle, resources would be created to apply discretionary stimuli, if ever needed). Such a mix, based on increased Flexibility and strengthened, exclusively contributive Security, may relax the public sector (*crowding-out effect*) which currently has an excess of labour force; thus, the human resources are pushed into the private sector and the medium term contraction effect of the aggregated demand can be attenuated – this will certainly happen as a result of freezing of income in the public sector.

Consequently, by implementing such a Flexi(se)curity model, Romania may come very close to the Anglo-Saxon market model, discredited so far but the only one possible for a limited economy and a state with limited resources.

5.3. Flexi(se)curity upon retirement of 1989 generation or the AGENDA for 2030

A FLEXIBLE AND SECURE LABOUR MARKET IN A MATURE CAPITALIST ECONOMY

In 2029 there will have been 40 years since the fall of the communist regimes and the generation that made it possible, currently the spine of the active population (the generation born as a result of the pro- high birth rates policy in the years 1967-70) will approach the retirement age. The retirement of this huge part of the population, after forty years of development (unless a random exogenous shock deeper than the current economic crisis strikes again) out of which twenty years spent by Romania as member of the European Union and, by that time, certainly Romania will have used the Euro for ten years already, will have won its right of gradual retirement (which will occur in the years 2040-50) from the labour market.

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This retirement will not have to be complete but only partial since the majority of this very active generation will actually retire when their biological life ends, thus completing a life long labour cycle for the first time in the economic history of the country.

It is also certain that at the end of years 2020s, Romania will have used Euro for fifteen years. In this context, the obsession of variations of the exchange rate will have disappeared since an international reserve currency will be used and there will be no longer big problems with the financing of the sovereign debt and of potential disequilibrium of the balance of payments, thus creating a strong platform for the implementation of anti-cyclic policies and discretionary stimulate when economic cyclicity calls for it. However, the current global experience shows that those countries that have been less prepared to enter the Eurozone , like Ireland, Spain or Greece, were also the hardest stricken by the current crisis. They accumulated the biggest disequilibrium prior to the crisis because of economic structure incompatible with the international reserve currency and significant disequilibrium on the labour market. There were cases of a too relaxed labour market, like in Ireland, or an excessively segmented one like in Spain or Greece, or in Portugal where economy was lagging years before the beginning of the crisis; the experience of these countries proved that EURO does not protect against inflationist strokes or against disequilibrium of the balance of payments, or high rates of unemployment, or against reversed economic cycle. What provides the unique European currency is strength; this currency is no longer subject to erratic variations and a secure option to finance any deficits due to the continental financial market.

In this context, in order to avoid retirement from the labour market of the largest generation of the current active population, the retirement will take place at a moment when demographic pressure will be high enough (impossible to estimate what will be the magnitude of potential immigration flows into Romania) and the membership to the Eurozone would trigger a major economic and social disequilibrium, higher than the current disequilibrium in the Spanish or Irish economies at the moment, the Romanian FLEXI(SE)CURITY approach should develop based on Agenda 2015-20. This development takes into account not only the option to attenuate the effects of economic cyclicity but also to avoid a crisis triggered by the retirement of the largest generation after the 2nd World War. This development will have to be based on Agenda 2015-20, right after the accession to the Eurozone.

The main pillars of this long-term agenda of FLEXI(SE)CURITY in Romania can be summarized as follows:

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- Continuation of liberalisation of the working relations so that all forms should get legal recognition, also those forms that currently are considered on the edge between formal and informal;

- Hence, adoption of the negotiation system for the minimal salary per field of activity and adoption by the Government of a minimal salary, on an yearly basis, applicable for those economic sectors and entities which do not have collective bargaining, that is for those marginal segments of the labour market with a high dynamics on the market ;

- The major adjustment against Agenda 2015-20 will have to be done in the long term social Security systems (pensions). Once the economy in the Eurozone, therefore a price stability reached, a gradual increase of the contribution rates to the public pension schemes will be needed in order to recover the percentage points lost as a result of the divide in favour of the compulsory or alternative private schemes (this is the wisest and cheapest solution), to replace the rate divide system with a supplement system with no ceiling so that, on the one hand, to fully ensure the assets of the public scheme and on the other hand, to create enough assets in the compulsory private scheme;

- The unemployment insurance system should become dual, including a contributive component open to those who, given the nature of their working relations, can make their contribution, and a non-contributive component focused on active measures, training and on a minimal material benefit, open to those who, given their working relations, do not have a real possibility to contribute to the creation of the assets of this scheme.

Thus, Agenda 2030 will strengthen the Security component of the national FLEXI(SE)CURITY model without affecting the Flexibility component.

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The gradual retirement of the generation 1967-70 will mean not only a turning point in the demographic, social and economic history of the country but also a biologic and political change. Gradually, the last generation that lived and was educated in the aftermath of the 2nd World War will retire. Consequently, the country will have to incur definite stability because this is the main ingredient to achieve and operate a FlexiSecurity model, therefore an economic organisation, and afterwards, on the labour market, which should combine Flexibility and Security, there will be STABILITY or PREDICTABILITY. Otherwise, the Romanian economy will not be able to reach the so-called STEADY STATE, which among

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others allows economic cycle to become endogenous to a certain extent. If this will not happen then, Romania will not be able to make use of its newly gained status of EU Member State nor to capitalize, later in the decade to come, on its status of a national economy making use, for the first time in its rather short history, of an international reserve currency – THE EURO!

ANNEXES

Annex no. 1

Indicators for business environment evolution and of labour market functionality in Denmark between 2004-2008

Indicator	2004	2005	2006	2007	2008
Growth rate of GDP	2,3	2,5	3,9	1,8	
International trade balance/GDP	4,9	4,9	3	2,1	2,3
Growth rate of employed population	-0,6	0,8	1,6	1,8	
Growth rate of apparent labour productivity	2,9	1,6	2,2	0,0	
Growth rate of numbers of worked hours	0,2	-0,9	0,7	-1,4	
Growth rate of labour hourly productivity	2,7	2,6	1,6	1,4	
Growth rate of real salary	2,1	1,4	1,8	1,7	
Rate of activity of employable population	80,1	79,8	80,6	80,2	
Percentage of self employed workers out of employed population	6,4	6,3	6,2	6,4	
Percentage of part time workers out of employed population	22,2	22,1	23,6	24,1	
Percentage of workers with fixed term contract out of employed population	9,5	9,8	8,9	9,7	
Percentage of primary sector out of employed population	3,1	3,0	2,9	2,9	
Percentage of secondary sector out of employed population	21,0	20,9	20,8	20,8	
Percentage of tertiary sector out of employed population	75,9	76,1	76,2	76,3	
Unemployment rate	5,5	4,8	3,9	3,8	
Long term unemployment rate	1,2	1,1	0,8	0,6	

Calculated from *Employment in Europe 2008 and UNECE Database*

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Annex no 2

Indicators for business environment evolution and of labour market functionality in the Netherlands between 2004-2008

Indicator	2004	2005	2006	2007	2008
Growth rate of GDP	2,2	1,5	3,0	3,5	
International trade balance per GDP	7,4	8,5	8	8,6	8
Growth rate of employed population	-0,9	-0,2	1,89	1,3	
Growth rate of apparent labour productivity	3,3	1,8	1,2	1,1	
Growth rate of numbers of worked hours	-0,1	-0,5	-0,1	0,0	
Growth rate of labour hourly productivity	3,3	1,8	1,2	1,1	
Growth rate of real salary	2,5	-0,5	-0,1	0,0	
Rate of activity of employable population	76,6	76,9	77,4	78,5	
Percentage of self employed workers out of employed population	13,7	14,0	14,2	14,4	
Percentage of part time workers out of employed population	45,5	46,1	46,2	46,8	
Percentage of workers with fixed term contract out of employed population	14,8	15,5	16,6	18,1	
Percentage of primary sector out of employed population	3,3	3,3	3,2	
Percentage of secondary sector out of employed population	17,8	17,5	17,3	
Percentage of tertiary sector out of employed population	78,1	79,2	79,5	
Unemployment rate	4,6	4,7	3,9	3,2	
Long term unemployment rate	1,6	1,9	1,7	1,3	

Calculated from *Employment in Europe 2008 and UNECE Database*

Indicators for internal flexibility in Romania and European Union in 2005

Indicator	UE-27	UE-15	NMS	ROU
A. Place of work and work organisation				
A1. Working at company (percentage out of total no. of employees)	72,8	73,5	71,1	64,9
A.2 Telework from home (percentage out of total no. of employees)	8,3	8,4	10,7	2,0
A.3 Work with computers (percentage out of total no. of employees)	45,5	49,8	32,9	14,9
A.4 Dealing directly with people who are not employees (e.g. costumers) (percentage out of total no. of employees)	62,4	66,3	51,5	32,9
A.5 Pace of work dependent on direct demands from costumers (percentage out of total no. of employees)	68,0	71,0	57,2	53,4
A.6 Pace of work dependent on performance targets (percentage out of total no. of employees)	42,1	42,8	36,6	51,3
A.7 Pace of work dependent on boss (percentage out of total no. of employees)	35,7	34,0	42,3	39,4
A.8 Task rotation (percentage out of total no. of employees)	43,7	43,3	43,2	48,4
A.9 Teamwork (percentage out of total no. of employees)	55,2	54,7	57,0	57,3
B. Job content and training				
B.1.Meeting precise quality standards (percentage out of total no. of employees)	74,2	75,0	72,8	68,0
B.2. Assessing quality of own work (percentage out of total no. of employees)	71,8	72,9	70,5	59,8

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B.3. Solving unforeseen problems (percentage out of total no. of employees)	80,8	81,4	80,8	73,3
B.4. Monotonous tasks (percentage out of total no. of employees)	42,9	41,9	49,0	36,7
B.5. Complex tasks (percentage out of total no. of employees)	59,4	59,0	62,4	55,0
B.6. Learning new things (percentage out of total no. of employees)	69,1	70,2	67,3	58,8
B.7. Able to apply own ideas in work (percentage out of total no. of employees)	58,4	59,1	62,4	61,4
B.8. Job-skills match: need more training (percentage out of total no. of employees)	13,1	13,0	14,9	11,5
B.9. Job-skills match: correspond well (percentage out of total no. of employees)	52,3	52,2	54,3	43,3
B. 10. Job-skills match: could cope with more demanding duties (percentage out of total no. of employees)	34,6	34,8	30,9	45,2
B.11. Has undergone paid-for training in previous 12 months (percentage out of total no. of employees)	26,1	27,3	25,6	11,0
C. Information and communication				
C.1. Consulted about changes in work organisation (percentage out of total no. of employees)	47,1	46,9	47,9	42,2
C.2. Subject to regular formal assessment of performance (percentage out of total no. of employees)	40,0	39,2	44,1	40,4
C.3. Well informed about health and safety risks (percentage out of total no. of employees)	83,1	82,4	88,3	78,5
D. Working time				
D.1. Mean usual weekly working hours	38,6	37,4	42,8	46,4

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(percentage out of total no. of employees)				
D.2. Usually working five days per week (percentage out of total no. of employees)	65,1	66,5	63,6	44,2
D.3. With more than one job (percentage out of total no. of employees)	6,2	5,9	8,0	5,8
D.4. Work fixed starting and finishing times (percentage out of total no. of employees)	60,7	60,8	63,6	45,8
D.5. Work shifts (percentage out of total no. of employees)	17,3	16,0	23,0	21,0
D.5. With less flexible schedules (percentage out of total no. of employees)	65,3	64,1	71,2	62,4

Source: *European Foundation for Improvement of Living and Working Conditions*, Fourth European Working Conditions Survey, Office for Official Publications of European Communities, Luxembourg 2007.

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Annex no 2.2.

**Distribution of employees depending on company size
in non-agricultural sectors in Romania in 2004**

%

Economic sector	Micro-companies (0-9 employees)	Small companies (10-49 employees)	Medium companies (50-249 employees)	Large companies (over 249 employees)
Non-agricultural sectors total	19,4	18,9	24,7	37,0
Mining industry	1,0	3,7	7,8	87,5
Manufacturing industry	6,6	14,6	28,7	50,0
Energy, gas, water	0,4	2,4	19,5	77,7
Constructions	14,4	22,4	36,2	27,1
Trade	45,9	31,8	16,7	5,6
Hotels-restaurants	36,3	32,4	22,2	9,1
Transport-Communications	14,5	13,0	17,2	55,3
Services for companies and real estate transactions	33,9	18,4	28,6	19,1
Social services	35,9	18,7	27,5	17,9

Calculated from *Romanian Statistical Yearbook 2005*

Dynamics of employees depending on company size in non-agricultural sectors in Romania between 1999-2004

%

Economic sector	Non-agricultural sectors total	Micro-companies (0-9 employees)	Small companies (10-49 employees)	Medium companies (50-249 employees)	Large companies (over 249 employees)
Non-agricultural sectors total	94,1	87,2	136,7	146,9	69,2
Mining industry	86,7	232,6	328,7	315,9	78,6
Manufacturing industry	88,2	65,4	128,2	155,8	68,2
Energy, gas, water	76,3	186,7	213,7	170,8	65,6
Constructions	94,1	125,9	106,0	121,8	61,6
Trade	95,3	77,1	143,6	124,9	56,7
Hotels-restaurants	105,0	111,7	138,7	112,5	46,5
Transport-Communications	120,5	147,9	213,7	136,7	101,5
Services for companies and real estate transactions	302,3	2102,0	1284,0	1675,0	68,9
Social services	56,9	48,1	55,9	74,8	58,1

Calculated from *Romanian Statistical Yearbook 2000 and 2005*

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Annex no 2.4.

Dynamics of employees depending on company size in non-agricultural sectors in Romania between 2004-2007

Economic sector	Non-agricultural sectors total	Micro-companies (0-9 employees)	Small companies (10-49 employees)	Medium companies (50-249 employees)	Large companies (over 249 employees)
Non-agricultural sectors total	107,9	128,0	128,9	106,5	87,6
Mining industry	63,6	160,5	133,8	79,9	58,1
Manufacturing industry	88,9	104,8	111,0	93,6	77,7
Energy, gas, water	82,3	149,1	121,0	83,7	80,3
Constructions	131,2	182,7	159,3	121,0	94,3
Trade	122,0	114,2	121,7	128,7	168,8
Hotels-restaurants	129,2	125,7	148,1	112,3	117,7
Transport-Communications	111,3	150,1	140,3	108,1	95,4
Services for companies and real estate transactions	113,5	116,9	122,4	96,1	125,0
Social services	140,0	145,0	157,2	105,7	164,7

Calculated from *Romanian Statistical Yearbook 2005 and 2008*

Distribution of employees depending on company size in non-agricultural sectors in Romania in 2007

%

Economic sector	Micro-companies (0-9 employees)	Small companies (10-49 employees)	Medium companies (50-249 employees)	Large companies (over 249 employees)
Non-agricultural sectors total	23,1	22,5	24,4	30,0
Mining industry	2,4	7,8	9,8	80,0
Manufacturing industry	7,8	18,2	30,2	43,7
Energy, gas, water	0,7	3,6	19,9	75,8
Constructions	20,0	27,2	33,4	19,5
Trade	43,0	31,7	17,6	7,7
Hotels-restaurants	35,3	37,1	19,3	8,3
Transport-Communications	19,5	16,4	16,7	47,4
Services for companies and real estate transactions	34,9	19,8	24,2	21,1
Social services	37,1	21,0	20,7	21,1

Calculated from *Romanian Statistical Yearbook 2008*

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Annex no 2.6.

Changes in distribution of employees depending on company size in non-agricultural sectors in Romania between 2004-2007

%

Economic sector	Micro-companies (0-9 employees)	Small companies (10-49 employees)	Medium companies (50-249 employees)	Large companies (over 249 employees)
Non-agricultural sectors total	3,6	3,7	-0,3	-7,0
Mining industry	1,5	4,1	2,0	-7,6
Manufacturing industry	1,2	3,6	1,5	-6,3
Energy, gas, water	0,3	1,2	0,3	-1,8
Constructions	5,6	4,8	-2,8	-7,6
Trade	-3,0	-0,1	0,9	2,1
Hotels-restaurants	-1,0	4,7	-2,9	-0,8
Transport-Communications	5,0	3,4	-0,5	-7,9
Services for companies and real estate transactions	1,0	1,4	-4,4	1,9
Social services	1,3	2,3	-6,7	3,2

Calculated from *Romanian Statistical Yearbook 2005 and 2008*

Annex no 3.1.

Computer literacy of persons participating in different forms of education, by age groups in Romania between March 2007 and April 2008

%

Age group	Formal education	Non-formal education	Informal education
25-34 years	68,3	40,4	37,6
35-44 years	25,0	29,5	28,6
45-54 years	6,4	19,8	20,2
55-64 years	0,3	10,3	13,6

Source: *National Institute for Statistics – Adults education*, Bucharest, 2008

Annex no 3.2.

Level of usage of at least one foreign language by persons participating in different forms of education, by age groups in Romania between March 2007 and April 2008

%

Age group	Formal education	Non-formal education	Informal education
25-34 years	74,3	47,4	43,0
35-44 years	21,1	23,9	28,2
45-54 years	46,0	21,2	19,8
55-64 years	7,5	9,0

Source: *National Institute for Statistics – Adults education*, Bucharest, 2008

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Annex no 3.3.

Distribution of employer financing efforts for education of persons aged between 25-64 years depending on the education level in Romania between March 2007 and April 2008

%

Level of education	Paid fully by employer	Paid partially by employer	No pay by employer
Total	42	32	56
Low	29	4	67
Medium	39	2	59
High	46	3	51

Source: *National Institute for Statistics – Adults education*, Bucharest, 2008

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