



European Commission

# **FLEXICURITY IN COLLECTIVE AGREEMENTS AND COLLECTIVE BARGAINING**

## **A European Research Project**

### **Document of national experts' inputs**

## **Wider application of the flexicurity tool: Belgium, France, Italy, Spain and Sweden**

### **1. Introduction<sup>1</sup>**

One of the stages of the project consisted in extending it to other EU countries with the aim of obtaining a preliminary assessment of the results in collective bargaining systems that are different to the three core countries in the project. The initial intention was to carry out a contrast based on expert knowledge and the analysis of specific collective agreements.

To this end, the project has counted on the collaboration of five experts in industrial relations, social dialogue and collective bargaining in **France, Spain, Italy, Sweden and Belgium**. This selection illustrates different systems, procedures, traditions and cultures regarding collective bargaining and complements the analysis carried out in Denmark, Germany and the Netherlands.

The general objective of this contrast has been to carry out a preliminary test that allows us to:

- Make a general assessment of the state of the matter with regard to the potential of flexicurity as an element to be applied in collective agreements (CA) in each country.

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<sup>1</sup> This chapter has been written from the information and analysis carried out at national level by the following experts: Javier Calvo (Spain), Christer Thörnqvist (Sweden), Salvo Leonardi (Italy), Frank Hendrickx and Nathalie Betsch (Belgium) and Claude Emmanuel Triomphe, Christophe Teissier and Rachel Guyet (France)

- Collect practices of implementation of flexicurity measures in collective agreements (CA) related with the overall topics assessed (flexicurity check-list) in the study.
- Test the opinion on the potential transfer of a computer-aid tool for the evaluation and monitoring of collective bargaining and collective labour agreements concerning flexicurity measures.

Based on document containing preliminary guidelines, drafted by the coordinator at this stage, the following aspects have then been analysed specifically in each country selected:

- Context regarding the relationship between flexicurity and collective bargaining in every country analysed, including debates on flexicurity, if they exist and the relevant positions of the social partners
- Information on the national systems to register CA
- In the general assumption of considering that the overarching goal of flexicurity could be strengthening adaptability of people and firms and increasing societal wellbeing, assessing the different forms or modalities of flexibility and security that can be adopted in CA. To this aim, a list of 22 modalities were put forward, grouped according to 10 general policy objectives established in the Lisbon Strategy.
- Examples of positive and innovative implementation of flexicure measures (potentially good practices) in a sample of collective agreements, representative due to their interest and innovation - not statistically representative -. That is, researching which could be the flexicure “contents” or measures that have been significantly developed and whether any of these measures could be considered to be innovative.

The analysis undertaken is limited, a simple test aimed to explore an approximation to the level of reception of flexicurity as defined in the European framework. Our intention is not to extrapolate the results nor to extract definitive conclusions, but to obtain a first impression on the evolution of flexicure practices in CA in several countries.

As regards the work method used, the assessment is based on the analysis of experts on collective bargaining who have worked on the texts of the agreements selected due to their relevance to the topic studied herein. In the case of Spain, collective agreement databases have been used to identify and analyse flexicure clauses, which appear in more than 50 agreements. Due to the particular system of collective bargaining present in Sweden, interviews have been carried out with representatives of the social partners besides studying the texts available.

Specifically, more than 15 collective agreements with different rank and scope have been analysed. In a simplified manner, given that different structures exist within every country – e.g. in Belgium, CA at company level is not addressed in this analyses due to there is no central database for company-level agreements and such agreements are often not made public -, the categories studied correspond with:

Countries	Type of collective agreement per level		
	National	Industry	Company
Belgium	2	3	
France	1	3	1
Italy		2	1
Spain	1	Several*	Several
Sweden**		4	

\* Including other territorial levels: provincial or local

\*\* The agreements analysed in Sweden are all at national level, although they are classified as industry level or per category (blue collar or white collar)

The results of this contrast analysis are shown below. Given the diversity in the answers obtained, derived from the specific nature of collective bargaining systems in each country, carrying out a comparative analysis of these results would be a complex task which, moreover, would not contribute relevant information to the study. However, some of the common elements can be highlighted and commented.

We shall start by briefly summarising the main aspects of the system of industrial relations in every country and, in particular, the structure and relevant characteristics of collective bargaining (section 2). This is followed by the opinion of national experts as regards the reception of flexicurity in CA. The incorporation of flexicurity-related clauses in several CA will then be analysed, selected due to their relative originality, or because they are recent and they fit in with the approach to flexicurity promoted by the EU. We shall then comment on the response obtained with regard to the possibility of establishing a digital database to monitor flexicurity elements in CA. Finally, we shall try to reach general conclusions on the results obtained in this analysis.

## 2. The institutional collective bargaining regime and recent tendencies

It is essential to understand the relationship between legislation, social partners and their autonomy, tradition and national practices, in order to understand the system of collective bargaining and, hence, the possibility to include new elements. Due to space limitations, this section will be necessarily short; as a result, certain important aspects within industrial relations, such as social partners, the types of undertaking or worker representation, will not be developed in depth, in the understanding that there is sufficient literature on these topics which may be easily consulted.<sup>2</sup>

### 2.1 Belgium

In Belgium, the structured collective labour relations are based on the Pact for Social Solidarity concluded in 1944. This political agreement, concluded between representatives of unions and employers organisations contained two main aspects: the realisation of a general system of social security on the one hand, and the creation of principles for structured collective labour relations on the other hand. One of the fundamentals in this pact, was the recognition of the representativity of the partners.

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<sup>2</sup>Amongst others, the different reports from the Dublin Foundation and the European Commission, including the latest report on "*Employee representatives in an enlarged Europe*". DG Employment, Social Affairs and Equal Opportunities. 2009, covering 32 European countries.

This led to the acceptance of the employers that the unions are representatives for all categories of personnel. With the introduction of the Act of 22 January 1985, the 'cadre' groups were able to break into this monopoly situation of the main unions, as they became recognised as a separate category of recognised unions, although only at the level of the enterprise.

The Belgian system is characterised by institutionalisation, autonomy and voluntarism of the social partners. There is a high involvement of the social partners in decision-making at national and regional policy-levels. The social partners are institutionalised in many governmental institutions and their autonomy in determining social and economic policy is respected by the government. The social partners have the freedom to conclude collective bargaining agreements at national, sector as well as company level. Still, this autonomy is under close supervision by the government, which has recently taken part in the social dialogue on occasion.

Following the 1944 Social Solidarity Pact, the legislator has introduced criteria for representativity of social partner organisations that would allow only the three main union organisations in power<sup>3</sup> to have exclusivity over negotiating binding collective bargaining agreements, over the introduction of candidates for works council elections, and to have the exclusivity to organise lawful strike actions. In other words, it leads to a monopoly of representativeness.<sup>4</sup> The importance of the notion of the 'most representative organizations' has been repeatedly emphasized.<sup>5</sup>

### **Social partners**

On average, some 50 to 60 per cent of Belgian workers belong to a trade union, i.e. one of the highest degrees of unionization in the European Union. Instead of decreasing in numbers the Belgian trade unions report a slight increase over the last couple of years. Belgian trade unions have, in general, no formal legal personality or corporate capacity. However, it can be said that Belgian trade unions have 'functional legal personality', in the sense that the legislator has provided for several legal possibilities for recognised unions to represent union or workers interest before Court. The most important recognised competence for trade unions is the power to conclude binding collective bargaining agreements for their members.

The principal Belgian employers' association is the *Federation of Belgian Enterprises* (VBO-FEB). It is composed of about 33 sector associations covering some 30,000 affiliated firms of which 25,000 are small and medium sized companies. These national associations cover most branches of economic life, with the exception of agriculture, small shops, handicrafts and the nationalized industries. In terms of jobs, VBO-FEB represents approximately 1.5 million workers in the private sector. The second important employer's organisation is the Union of Independent Entrepreneurs (UNIZO) which organizes the small firms, and a number of agriculture organizations.

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<sup>3</sup> The Christian, socialist, and liberal union.

<sup>4</sup> M. Rigaux, "De vertegenwoordiging van het kaderpersoneel in de ondernemingsraad", *TPR* 1987, 3.

<sup>5</sup> It is defined in acts dealing with the National Labour Council (29 May 1952), collective bargaining agreements and joint committees (5 December 1968), the works councils (20 September 1948) and the committees for Prevention and Protection at Work (4 August 1996).

The Belgian employers' associations have a very important role to play; not only do they give legal, fiscal, economic and other advice to their members, but they also engage in collective bargaining. While the VBO-FEB and UNIZO are active at the national cross-industry-wide level, the industry-wide associations take care of the sectoral levels. Data show that Belgium has not only a high trade union density, but also a high employers' organisation density.

### **Collective bargaining agreements**

The collective bargaining agreement is an important legal institution. Belgium has a high coverage of collective bargaining agreements estimated at about 96 % of all workers. This is largely due to the fact that this Member State has a system of declaring collective bargaining agreements universally applicable by Royal Decree. All collective bargaining agreements concluded in the National Labour Council or in Joint Committees are declared universally applicable.

Collective bargaining agreements are, in principle, agreements concluded under private (contract) law. However, collective bargaining and collective bargaining agreements are regulated by an Act of 5 December 1968 on collective bargaining agreements and Joint Committees<sup>6</sup>. On the basis of this Act, it does not matter for a collective bargaining agreement's coverage whether an employee is unionized or not. The general rule is that a collective agreement is applicable to whoever is employed by a bound employer. Trade union membership is thus not required in order to be able to be covered by a collective bargaining agreement.

### **Structure**

On the basis of the principles of autonomy and voluntarism of the social partners, the Belgian system knows a practice whereby the national social partners (national unions and employers organisations) make central **interprofessional agreements** every two years, on the basis of a negotiation period, usually starting in autumn.<sup>7</sup> Such centrally agreement serves as a main reference point and a basis for the subsequent collective bargaining at sector level, though it is not a real CA in the sense of the 1968 Act.

Besides this rather informal system of negotiations, directed towards social and economic policy, the national trade unions and employers organisations are also engaged in collective bargaining at national level in a more formal way. Collective agreements are concluded at the various levels of industrial relations:

- a) At the national inter-industry level in the National Labour Council. This body is composed of employers' and employee representatives and presided by a civil servant who is not a party to the collective bargaining agreements as such. As said before, collective agreements concluded within the National Labour Council are almost always rendered binding by Royal Decree and then become applicable to all employers and employees in the private sector.

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<sup>6</sup> Act 5 December 1968, *Official Gazette* 15 January 1969, often amended thereafter.

<sup>7</sup> For example, in autumn 2008, a new round of talks was made in order to reach a new central agreement for the years 2009-2010.

- b) A tier of industrial relations just below the one of the National Labour Council is situated at the level of the various industries or sectors of business. Sector level collective bargaining takes place in the '**joint committees**' of industry set up per sector of industry. Mostly these joint committees are set up separately for blue and white-collar workers, so that bargaining for the two kinds of workers often takes place separately. There are far over one hundred of these joint committees. In these, several hundreds of collective agreements are concluded per year. It is fair to say that the brunt of the wages and the working conditions for a large number of employees are set at the level of the joint committee of industry.
- c) One more level below is the level of the **company**. It should be taken into account that lower level collective agreements cannot run against the content of higher-level collective agreements. They may not foresee conditions and benefits which are less advantageous to the employee. However, they can foresee conditions, which are more advantageous.

## 2.2 France

Collective bargaining in France can take place at least at three levels:

- a) At the national level covering all employees;
- b) At the industry level which can involve national, regional or local bargaining;
- c) At company or plant level. Most of them are open –ended agreements.

Therefore, under the concept of agreements one should consider:

- general agreements covering a wide scope of issues (pay, working time, conditions for recruitment and termination, additional social benefits, etc..)
- specific agreements dealing with a small number of issues: vocational training, classifications, occupational health and safety etc...
- amendments to general or specific agreements.

a) **National and cross industries agreements** for the whole economy often provide a framework for some major area of policy, and are sometimes followed by legislation to give legal force to what has been concluded. The position of national level bargaining has been enhanced by the new legislation, passed at the start of 2007, which commits the government to attempting to get a national level collective agreement before introducing legislation in the area of employment. In 2008, 3 national agreements have been signed and 23 others have been amended.

b) **Industry level bargaining** is the most important level for collective bargaining, in terms of numbers covered and for unions and employers' organisations that have already signed an agreement on pay there is an obligation to negotiate annually on pay rates, and every five years on job classifications. However, some of the agreements signed have only limited importance in determining pay as many of the rates set are below the national minimum wage, which then supersedes them. Once signed, the terms of the agreements are binding for all the employers, members of the employers' federations which signed the agreements and must be applied to all employees. The government has often been encouraging the negotiation of new industry level agreements. Despite this, there were still many industrial or service sectors whose agreements had minimum rates below the national minimum wage. In 2008 1117 agreements or amendments have been concluded at industry level, 50% of them relating to wages, others relating mostly

to vocational training, equal opportunities, additional social benefits and working time.

c) At **company level** there is also a requirement for the employer to negotiate annually on pay, working time and working conditions, and in contrast to the obligation at industry level, this is backed up by penalties in case of non-compliance. However, there is no obligation to reach an agreement, and often the employer will listen to the unions' demands and then fix pay and conditions unilaterally. Recent legislation potentially allows company level agreements to diverge from the industry agreement in areas where this is not specifically prohibited by the industry agreement, with the exception of a number of key issues such as minimum pay rates where divergence is prohibited. In 2008, 22 000 company level agreements have been signed, wages, working time and equal opportunities having been the dominant items.

Overall, the obligation to negotiate and the fact that government very often extends the terms of industry level agreements to all employers mean that **formal collective bargaining coverage is very high**.

Negotiations are conducted by the trade unions on one side and employers' federations or individual employers on the other. At national level agreements can only be signed by "representative" trade unions: up to now the five large national confederations recognised as representative at national level. Their industry federations have the same rights at industry level together with other unions which have shown that they have a degree of support in the industry. At company or plant level, agreements can normally only be signed by the trade union.

#### **Different drivers and contents at different levels**

- National level negotiations for the whole economy cover a wide range of issues, including social security and industrial relations. A recent example were national agreements on modernising the labour market, on reforming vocational training or easing the access for senior workers to the labour market.
- Industry level and company negotiations cover pay, pay structures, working time and a range of other working conditions.
- Company level negotiations should also cover a wide range of topics, including not just pay and conditions issues, such as pay, hours of work and work organisation, but equality of opportunities targets, human resources planning ("*gestion prévisionnelle de l'emploi*") and other measures.
- In addition the state plays a very direct and important role by setting a national minimum wage (SMIC).

#### **The impact of recent reforms on Collective Bargaining in France**

The legislation introduced in 2004 made important changes to the rules for bargaining, particularly at company level. Unions and employers at industry level can now agree negotiating mechanisms for small and medium-sized companies without union delegates in their industry. It is not necessary to get all the unions involved to sign for the agreement to be valid. In the past, it was sufficient to get just one union to sign but the new legislation has changed the rules at national, industry and company level. At national level, agreements can be blocked if three of the five confederations object.

At industry or company levels, there are two possibilities. The first is where the unions in the industry agree that a specific set of rules should apply to determine whether an agreement has majority support.

To be valid, this procedural agreement must be signed by unions representing a majority of employees in the industry, either on the basis of their support in the last works council election or on the basis of a specific industry vote. The second possibility, which applies where there is no procedural agreement, is that the blocking procedure applies. In other words an agreement is not valid if a majority of unions in the industry object to it.

At company level, the starting point again is an industry level agreement, which fixes the rules. Two options are possible. Under option one, in order to be valid an agreement must be signed by one or more unions which received a majority of votes in the most recent works council or employee delegate elections. And if no union has this majority, the agreement must be supported by a majority of employees voting in a ballot. Under option two, an agreement is valid provided unions representing a majority of employees, based on the results of the latest elections for the works council or employees' delegates, do not object. If there is no industry level agreement on the rules, it is option two which applies.

In July 2008, the French Parliament adopted a law on 'social democracy and working time reform', which will radically change the rules regarding trade unions. By 2012, the majority rule will be abolished, and – as set out in the social partners 'common position' adopted in April 2010 – in order for a trade union to be representative and participate in company-level bargaining, it must obtain at least 10% of the votes in workplace elections. This threshold is set at 8% for bargaining at sectoral and national levels. In addition, collective agreements will be valid only if they have been concluded by one or several trade unions that have obtained at least 30% of the votes at workplace elections and without objection from trade unions that have obtained a majority of the votes. In companies with fewer than 200 employees and no trade union representative, employers will be able to negotiate with non-union employee representatives.

Due to the changes introduced by new legislation, it is now easier for company agreements to diverge from industry level agreements. In the past, company level agreements could only improve on the industry level agreement by which the company was covered. The new legislation also makes it more difficult for an agreement to be signed by one union in the face of opposition from the others.

### 2.3 Italy

The Italian system of industrial relations is based on a dual bargaining structure, articulated between a national level of industry-wide CAs and decentralised collective bargaining at the undertaking level or, alternatively, territorial level. It is based in the "Protocol of 23 July 1993", a peak level tripartite agreement, establishing a new institutional framework for income policy, collective bargaining, workers/unions representation at the workplace level, active labour market policies and measures to support the production system.

The two bargaining levels are co-ordinated according to the principles of: a) co-ordination; b) specialisation; c) derogation "*in melius*" (only for the workers). According to an articulated system, national industry-wide CA establishes a general pavement of minimum rights and standards for the whole workforce, giving social partners possibility to improve pay and working conditions through a second level of collective bargaining. On the matter of pay such co-ordination implies that undertaking CAs can only deal with different issues (*specialisation principle*) to those already dealt with by the national contract. Since the former fix the minimum pay levels taking into account inflation rates (purchasing power), at the undertaking level the rise in pay – as "variable remuneration" – has to be closely linked to outcomes and performances incentives.



1. The **national industry-wide agreements** have been of two types in terms of contents and duration<sup>8</sup>:

- a) Every four years about either pay and “normative” clauses (union rights, employment relations, hiring and firing, working time, holidays, job grade, health and safety, sick and maternity leaves, education leaves, vocational training, arbitration and settlement procedures in the case of individual disputes),
- b) Every two years about pay, in order to adjust in the mid-term of two years the growth in salaries to the real inflation rate and so maintaining the purchasing power of the salaries.

Every sector – industry, agriculture, public servants – is divided up into various sub-sectors or branches, established according to conventional criteria. Beside this “horizontal” articulation, based on sectors/branches, there’s a further distinction within the same sector/branch, related to the companies’ size (large; small-medium; craft undertakings) or type of property (co-operatives). The final outcome is a huge number of national collective agreements, esteemed to be over 400.

Collective bargaining coverage is rather high, estimated at around 80% of the entire employed workforce. It’s worthy to underline that such a good performance is reached without any formal administrative procedure of extension *erga omnes* of the Industry-wide agreements<sup>9</sup>.

2. Bargaining over variable pay and working conditions take place in details at **company-level**. The second level of bargaining can be developed at company or, alternatively, at territorial level. The latter is the case for the sectors with a traditionally high presence of SME’s (craft, retail), and/or contingent seasonal workers (hotels and catering, building and farming). For this level the bargaining unit usually coincides with the production unit, especially in the SMEs. If the undertaking is part of a big group, with several workplace units, there is usually a frame and common CA, valid for all the different plants, but CAs can also be signed at individual plant level. Each company collective agreement lasts four years, during which the parts provide information and consultation and check up on the contract’s regulations with particular emphasis on aspects connected to the company investments and strategies (mergers and acquisitions), restructuring processes, employment prospects, technological and organisational innovations, work environment, vocational training.

It’s worthy to stress that second level of collective bargaining is not compulsory. In fact, the parts “can” negotiate at such a level. In practice, it can be made executive by the workers’ union force, according to the concrete power relations established in each company or firm. It has been calculated that, in average no more than 14,5 percent of the overall gross wage is determined by this second level of negotiations, which becomes a mere 6.7 percent in the undertakings with less than 50 employees<sup>10</sup>.

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<sup>8</sup> After the recent reform in 2009 (see below), the duration will be the same every three years.

<sup>9</sup> The relatively high rate of density of the social partners organisations, jointly with the attitude of the Courts to assume the national collective agreements as the national minimum standards for pay and working conditions (as evoked into the Constitutional Law), provides *de facto* these CAs – subscribed by the most representative social parties – of *erga omnes* effects.

<sup>10</sup> Bank of Italy, *Rapporto sulle tendenze del sistema produttivo*, Rome, November 2008.

According to different sources, the second level has been covering approximately the 38% of the whole workforce.

According to the last findings of the Bank of Italy Report, during the last years there has been a downward trend in the coverage of the second level of negotiation. Territory and firms' size play a quite crucial role. Second level of collective bargaining is almost absent in the South and in the very small enterprises (under 15-20 employees).

### **Debate on new framework collective bargaining agreement in Italy**

The revision of the collective bargaining system has been commonly considered opportune and since the end of the 1990s a big debate has been involving experts and social partners organisations. All actors seem to be well aware of the poor outcomes (low productivity rates) of all the main economic indicators produced, even if not exclusively, by the industrial relations machinery. In the academic debate and social dispute, the main topic has concerned the relationship between centralisation and decentralisation of the collective bargaining system. A part of the observers, employers associations and unions, consider that the Italian system of collective bargaining is too much centralised and rigid. Consequently, they have been claiming for a stronger decentralisation, through a reduction of the prerogatives of the industry-wide national collective agreements and a shift of the barycentre towards the second level of negotiation.

Accordingly, a wide number of social partners associations, under the impulse of the government, have subscribed on January 22, 2009 a new framework agreement. The largest trade unions confederation, the CGIL, refused to sign the agreement. The main measures contained into the new agreement are the following.

- The dual collective bargaining structure, based on sectoral and decentralised agreements, is confirmed.
- The duration of industry-wide agreements will be set at three years, for both the normative and economic parts.
- Industry-wide agreements will continue to set common economic and normative protections for workers in all sectors nationwide.
- The protection of real wages will be pursued by way of a new indicator, which will replace the old "planned inflation rate". The new indicator will be calculated by a third party and will be based on the "European Harmonised Consumer Prices Index" (HCPI), excluding imported energy costs.
- The significance of the difference between the indicator and the actual inflation rate, calculated in the same manner, will be assessed at inter-sectoral level and not, as in the past, at sectoral level.
- New rules on the renewal of CAs will be introduced, including the possibility to resort to the intersectoral level for mediation and the strengthening of clauses on conflict-free periods.
- Decentralised collective agreements will last three years and will cover topics defined by sectoral agreements or legislation and which do not concern those already regulated at other bargaining levels. The agreement contains a specific request for the introduction of structural economic incentives, such as tax and social security relief, for decentralised bargaining on performance-related pay.
- The possibility to introduce 'opening clauses', to cope with [restructuring](#) or to foster economic growth and employment creation on both the economic and normative parts of sectoral agreements will be allowed. Not only, as it was in the past, in local contexts affected by serious crisis, but also in case of start-up of new business activities.
- The objective will be introduced to simplify and reduce the number of industry-wide agreements, which at present amounts to more than 400 agreements.

For CGIL the conclusion of a separate agreement was a deliberate objective of the centre-right government, aiming to break and split the trade union front, isolating and excluding the most representative trade union organisation.

## 2.4 Spain

Collective bargaining in Spain is a constitutional right. Spanish legislation and courts recognized three types of collective agreements:

- a) **Statutory collective agreement** which fulfils all and each one of the formal and procedural requirements demanded by legislation –Statute of Workers’ Rights (Estatuto de los Trabajadores). It is legally binding and applies to all employers and employees included within their scope, whether or not they are affiliated to the organisations which sign the agreements.
- b) **Extra-statutory Collective Pact Agreement** which is subscribed between the workers’ representatives and the employer, but do not satisfy or cover all the requirements necessary to be classified as a statutory collective agreement --for example, sufficient legal status of the signatories. This agreement is also legally binding, but only applies to workers and employers affiliated to the organisations which concluded the agreement. In other words, it will only bind those who actually carry out the negotiations, either directly or through their representatives.
- c) **Inter-professional agreements** are subscribed between the main representative trade unions and employers’ associations of the State -or Autonomous Communities- and will be subject to the arrangements laid down for statutory collective agreements. There are two different types:
  - i) structural agreements which will be able to establish the framework of collective negotiation, as well as lay down the rules for resolving conflicts between agreements from different areas and the principles of harmonisation between the diverse units signed up to contracts; always under the assumption outlined above that those matters which cannot be negotiated at a lower level;
  - ii) agreements concerning specific matters regulating the working conditions, or other labour matters.

From the 1994 Labour Reform, the process of decentralisation as regards collective bargaining has given rise to the progressive appearance of **company agreements** the role of which is to complete the collective agreement at this level, to adapt it or to conclude the consultation processes with workers’ representatives. Their conclusion involves fewer formalities and procedural requirements and they are legally binding and applied to all the workers of the undertaking.

This labour reform also modified the relationship between law and collective agreement, with the former influencing the latter to a great extent. From this moment onwards, a setback in legal intervention took place, leaving much more space to the collective regulation. So the areas in which the law determines the minimum regulations liable to improvement by collective bargaining have gradually been reduced and, consequently, there has been an important increase in the number of fields where the only regulation comes from collective bargaining. Nowadays, rather than a strict hierarchical relationship between both sources, the relationship is based on the division of responsibilities, regulated in each case by the law itself.

According to the Spanish National Statistics Institute and the Spanish Labour Ministry, there were approximately 6,016 legally-binding collective agreements in Spain during 2007, covering 10.384.000 workers i.e. approximately two out of three

Spanish workers are covered by a Statutory collective agreement. The vast majority of these CA are at undertaking level: three of every four CA were this type of pact. However, the vast majority of workers and undertakings - 87,9% and 99,6% respectively - are covered by sectoral agreements. Between these sectoral CA the most important are those whose scopes are counties or “provincias”, covering 67,2 % of undertakings and 53% of employees. It is necessary to highlight the growing importance of national sectoral agreements in the Spanish collective bargaining system.

The content of collective agreements usually covers all types of issues within the field of industrial relations; they essentially concern terms and conditions of employment and other matters relating to the contract of employment (pay, working hours, working time, health and safety, occupational groups and categories, promotion, vocational training, geographical and functional mobility, disciplinary procedures, etc.) or relating to the collective aspects of labour relations (trade union rights, the rights of workers’ representatives, the joint committee, settlement of disputes concerning the interpretation and application of the agreement, etc.).

## **2.5 Sweden**

In Sweden, industrial relations have traditionally been highly centralized with strong, nation-wide, high-density associations for both employers and employees, covering all sectors of the economy. The rules in Swedish labour law are often discretionary, and may therefore be negotiated in collective agreements. These agreed rules are legally binding and can only be changed in new negotiations. It is not possible to agree rules giving employees worse conditions than the law gives.

As for the representativity and hierarchy of the social partners, these follow the social partner organisations, which may all negotiate at the level where they perform. There are mainly two levels for the wage bargaining agreements. The first level is the national/sector level where the employer associations and the central trade unions bargain for the national/sector wage agreements. The negotiations start at this level and are then followed by local employers bargaining with local trade unions for local pay. The local bargaining may give better results in certain companies, in others they just follow the “frames” set at the sector level.

Sweden has no system for the extension of collective agreements. However the coverage of collective agreements is 90%, on average. The main reasons are the high membership rate of trade unions. Also, it is customary that local agreements cover all employees in a certain workplace. Employees who are not a member of a trade union receive the same pay, at least representing the minimum level of the collective agreement, as those who are members. In certain sectors collective agreements applies in practice to all the workers, even those who are not organised, especially in the public sector, where the agreement coverage is 100 percent.

Another important feature is the close relationship between the central and the local levels of the organizations, and as a consequence, between different bargaining levels. Swedish trade unions negotiate wages and (negotiable) working conditions directly at shop-floor level within the frameworks set by industry- and nation-wide agreements; in difference from most European labour markets there are no works councils. One crucial advantage for the unions of the close relationship between the central and the

local organizational and bargaining levels is that it has helped maintaining a high organizational density even in small and medium-sized companies (SMEs). Another advantage is that employees in small firms have about the same wages as in bigger companies, which is rare within the European Union (Andersson and Thörnqvist 2007). The trade unions have local activists with good resources for organizing workers even in small plants, and also a strong central back-up that can bring pressure to bear on firms in agreement-related issues such as working hours, health and safety, vocational training, gender or ethnic discrimination issues and minimum wages.

A complicating factor in the bargaining rounds is that even though the three trade union confederations organize workers in the private as well as in the public sector, this is not the case with the employers' associations. In the private sector, the same association normally negotiates with affiliates of all three union confederations; LO, TCO and SACO. Most state-owned companies and undertakings, with a few but important exceptions, are represented by *Arbetsgivarverket* (the National Agency for Government Employers). Traditionally there have been two more employers' confederations for counties and municipalities: the Federation of Swedish County Councils (*Landstingsförbundet*) and the Swedish Association of Local Authorities (*Kommunförbundet*). After a merger completed in January 2007, the two organizations were replaced by SALAR (Swedish Association of Local Authorities and Regions; *Svenska Kommun- och Landstingsförbundet*). Kommunförbundet represented governmental, professional and employer related interests of Sweden's 290 local authorities;

### **3. Summary of current debates on flexicurity and collective bargaining**

The issue of flexicurity receives a fair dose of scepticism in **Belgium**. This is related to both the scientific as well as the divergent social partner attitude towards the concept. In the Belgian government, there is an interest in the topic. It is currently under research to what extent flexicurity implies a need to revise Belgian labour law.

Trade unions and employers have quite different views on the various policies that are usually considered to contribute to flexicurity. For instance, trade unions are quite reluctant to measures concerning the activation of job seekers while employers are very much in favour. With regard to the regulation of the 'time credits' (career interruption) systems, trade unions demand extended career interruption systems to presently excluded workers (such supervisory staff) as well as an obligation on employers to replace workers on leave. On the other hand, the employers have argued for more limitations on the use of 'time credits'.<sup>11</sup>

In a recent document published in 2009 on the website of Eurofound, Sabine Wernerus has given an overview of Belgian trade union attitudes with regard to flexicurity<sup>12</sup>:

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<sup>11</sup> See: [http://www.eurofound.europa.eu/eiro/studies/tn0803038s/tn0803038s\\_4.htm](http://www.eurofound.europa.eu/eiro/studies/tn0803038s/tn0803038s_4.htm) (R. Pedersini, TN0803038S, **Publication date:** 15-09-2009.

<sup>12</sup> See: <http://www.eurofound.europa.eu/eiro/studies/TN0803038s/be0803039q.htm> (S. Wernerus, BE0803039Q, **Publication date:** 15-09-2009.

- Life-long training: “The social partners would like to increase the effort put into training, as per the law of the 23rd December 2005 relating to the Solidarity Pact between Generations, since this is seen as being the responsibility of both employers and workers.”
- Active Labour Market Policies: “The workers’ representatives are demanding an evaluation of the measures taken with regard to the ‘activation’ of job-seekers. On their side, the employers’ representatives insist on the necessity of pursuing this dynamic. As for the Solidarity Pact between Generations, the union representatives demand the abolition of the requirement for workers who have reached the early retirement age to be available for work and a more flexible approach to the sanctions to which they are exposed. They also reject the reduction in charges granted to the employers. The employers’ representatives consider that the Pact is favourable for the economy, the self-employed and employment in general and, consequently, they want to see it implemented in its integrity, rapidly.”

In **France**, flexicurity is not an object of explicit negotiation. An attempt of national negotiation on flexibility took place in 1984 but the negotiation failed at the very end, leaving behind a kind of trauma among social partners which ended only 25 years later. Flexicurity is part of a more general background linked to the European debate but is neither present as such in the national political agenda nor in the agenda of the social partners. In the present collective bargaining system the main issue concerns securing career paths and can be considered as a kind of flexicurity “*à la française*” since it tries to ensure flexibility of the work force by promoting training and skills improvement in order to enable a better adaptation of the labour force to the requirements of the companies while at the same time securing employment security of the employee. As such it reaches a win-win compromise.

Moreover, behind the concept of flexicurity, we also find the notion of trade off regarding collective bargaining at company level. As mentioned above, a clear trend toward decentralisation of collective bargaining at company level has been emerging since 1982. Progressively, several laws has allowed social partners at company level to deviate from labour standards set out at a upper level, ie in compulsory laws and collective agreements at sectoral level. This decentralisation has mainly been aiming at giving companies possibilities to adjust labour standards to requirements of their businesses. In that extent, decentralisation of collective bargaining in France reflects a trend to foster more flexibility of labour standards, especially on issues related to working time and its organisation. In those hypotheses, conclusion of collective agreements at company level has governed and still governs the possibility to deviate from upper standards. In this context, it’s logical that a trend toward negotiation of real trade offs has been emerging at company level.

For instance, laws related to reduction of working time to 35 hours a week, passed in 1998 and 2000, planned that working time organisation resulting from reduction of weekly working hours should be negotiated at company level. A significant number of company collective agreements have thus been concluded in that context and have appeared to be trade offs between working time reduction and more flexibility in working time organisation (calculation of working time on an annual basis and not on a weekly one for instance), combined with moderates wage increases. In addition, different laws has set out legal duties for employers to negotiate collective agreements

at company level on a wide range of issues, such as forward looking employment and skills management (“*GPEC*”) or equal opportunities between men and women. Trade offs may result from collective agreements on such issues (see, for instance, the example of Rhodia, point 4.5 below).

Finally, even if flexicurity is not explicitly an object of negotiation in the French context, one may not ignore the increase of negotiations at company level, where employers and trade unions are in a better position to concretely negotiate trade offs.

In **Italy**, the notion of “flexicurity”, imported from the EU employment strategy and debate, has recently become very fashionable and commonly used by scholars, policy makers and mass media. It is normally invoked or stigmatised negatively, in the public discourse about the need and the opportune guidelines for the “recast” of the Italian welfare state and labour law.

Up to now, instead, it hasn’t very explicitly mentioned in relation to collective bargaining. It’s not part of the usual lexicon. Flexicurity normally provokes strong “ideological” reactions, between the neo-liberals in favour and the traditional left against. The Confederation of Italian Industry (*Confindustria*) fully approved the contents of the European Commission’s Communication on flexicurity and agreed that flexibility in the organisation of work and a modern social security system are two components that are fundamental for the “modernisation” of labour markets. Unions like CGIL explicitly reject the concept in itself and what is considered as the “philosophy” underlying. CISL and UIL are instead more opened to adopt the concept and put it consequently in practice. Where all unions seem more or less to agree is in refusing the idea – erroneously co-related to flexicurity – of a mere “exchange” between *job security* and *employability* or *income security*, considered too vague and dangerous. It goes without saying that this general approach doesn’t preclude unions to always try to get better, longer and more inclusive unemployment benefits in case of job losses.

The situation is different, however, if one examines the contents of CAs that can be classified as related to the concept of flexicurity or contain core elements of it. Here you can find collective agreements that were concluded long before the concept of flexicurity was ever created or people became aware of the term.

Traditionally, collective bargaining in **Spain** has been poor in contents as a result of a patronising industrial relations system inherited from the dictatorship until the end of the 70s. Regulation aspects dominated the managerial aspects. collective bargaining has developed slowly and unequally: agreements that are dense and rich in topics and extraordinarily comprehensive –usually agreements in undertakings or sectors that are technologically advanced, as in the case of Telefonica- can be found alongside “poor” CA in certain traditional sectors and in sectoral agreements at provincial level which basically focus on wages (increase) and working hours (reduction) and where there is hardly any space to deal with flexicurity.

The debate on flexicurity in Spain starts after the Commission publishes its Green Paper on 22 November 2006, «Modernising labour law to meet the challenges of the

21st century»<sup>13</sup>. The trade unions' stance is strongly opposed to flexicurity as a model apparently inspired in Denmark and unaware of the high rate of temporary employment contracts (flexibility) in Spain. For them, employers had already obtained high levels of flexibility through collective bargaining and through the use of new forms of work organisation (productive decentralisation). At the same time, they severely criticised the Commission's reflections on open-ended contracts and/or the possible "substitutions" of security in contracts with security based on public benefits, which entails transferring costs from employers' to the public budget.

Nevertheless, despite rejection from trade union organisations to the incorporation of flexicurity, voiced to greater or lesser extent, a precedent exists in the 2002 Interprofessional Agreement on Collective Bargaining at national (confederate) level which included a section on the need for a "Balance between flexibility and security to defend employment and avoid the traumatic adjustments thereof". Since then, several references on internal flexibility have been included in the wo-year extension of this agreement and have given rise to an enrichment of contents, although at a slow pace. This is mainly because multi-annual agreements (three and four years) have dominated in the last few years, slowing down the modernisation process of collective bargaining.

The main employers' organisation, CEOE, seemed to take on the European employers' position, welcoming the modernisation of this debate, although questioning the competence of the Union on some of these aspects.

It is important to highlight that most of the more interesting flexicurity measures appear, for instance, in agreements that end consultation periods in the case of collective dismissal, transfer or modifications, the irregular distribution of working hours or equal treatment plans.

According to Pedersini (2008), in **Sweden**, the debate on flexicurity centres on the assessment of the Danish model and comparisons with the situation in the two neighbouring countries. The employers underline the rigidities in the Swedish regulation of dismissals and would welcome a revision of the strict rule on the identification of workers to be involved in collective layoffs. The trade unions focus their attention on Active Labour Market Policies, especially for young people, and criticise the recent reform of the unemployment benefit schemes, as they believe that it reduced workers' security.

The overview of flexicurity measures is quite brief. In the area of active labour market policies, Sweden has a well-developed and long-established system of policies. The involvement of the social partners in the policymaking process and their role in administering parts of the social security system, like the unemployment funds, are relevant. Social partners also actively support the provision of services, notably though the unemployment funds and within the implementation of the redundancy programmes (Pedersini 2008, p. 57).

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<sup>13</sup> COM (2006) 708.



## 4. Analysis of “flexicure” contents in collective agreements

The assessment on the level of penetration of flexicure elements in collective agreements has been carried out per subjects (provisions related to EU flexicurity policy framework, in particular the 8 common principles, the Employment Guidelines 20 and 21, the flexicurity components and pathways) that appear as a result of the study as it progresses. Thus, the reception of 7 flexicure measures in the CA clauses analysed in the five countries at stake was checked at this stage of the project – the guideline table of contents is included at the end of this chapter (or as an annex to the final report)-. Although some of these measures can be considered to be widespread, it allows us to establish affinities between the objectives at which they are aimed:

1. Transition security: timely supporting of transitions between jobs, aimed at preventing unemployment. Hiring and firing regulations. Provisions of employment security.
2. Combining external flexibility with fighting segmentation. Improvement of equal access to employment for all. Equal treatment of atypical workers.
3. Development of human capital. Facilitation of life long learning, anticipation of skills needed in the future. Increase of employability. Creation of individual budgets and trajectories for education and training. Development and implementation of standardised qualification- and validation systems, also to identify skills previously acquired (accreditation of prior learning).
4. Enhancing functional flexibility combined with employment security. In the case of partial unemployment for a limited duration, enable income and job security combined with training to enhance employability.
5. Working time arrangements conducive to firms’ and workers’ demands. Availability of various leave schemes, such as types of parental leave. Active promotion of gender equality. Working time arrangements that facilitate the combination of work and care.
6. Development of business potential. Promoting job quality, including health and safety and representation security, and innovative work practices/social innovation.
7. Allocating resources cost effectively while relating pay and performance in a fair and transparent way. Strengthening competitiveness. Increase of productivity link between wage development and the economic cycle/productivity growth. Variable pay schemes.

Examples of these 7 groups of measures have been found in specific clauses in CA at company level, or treated generally in framework agreements at national level or in Industry Agreements, although unevenly. In general, aspects related to work time management can be found in the CA of every country as a result of older trends of decentralising towards the level of the undertaking.

An issue to be highlighted is the collective measures agreed as a result of the current recession and which are aimed at the use of temporary suspension of employment contracts combined with social protection measures –unemployment benefit- and training for the workers affected. This type of agreements, which in theory seek to increase functional flexibility, have been adopted under pressure, involuntarily, and hence we believe that they should not be considered as representative of a positive approach to promote flexicurity. For this reason, they will not be analysed in this chapter, except two cases in Belgium and France, which we consider relevant precisely due to their exceptional nature.

We shall briefly describe below some of the measures identified in CA and in social dialogue in the five countries selected, which correspond to the categories or groups of provisions. Our classification intends to be illustrative and is subject to qualification. Indeed, we are aware that some of the clauses or measures agreed could fit into more than one group, depending on the CA, its structure and the aim sought. This may be doubtful in some cases and is especially applicable to the category of collective agreements with a national (framework agreements) or sectoral scope, which intend to cover different measures with a common denominator (for instance, equal opportunities). Moreover, several measures interact because they have the same aim, and hence it is complex to isolate the “package” in which they are included. Aware of this limitation, we have selected a group that we consider to be more predominant or significant as regards our analysis. As a result, at the end of each section analysing flexicure clauses, a table has been added that tries to systematise and summarise the main points of interest of each group in the check-list established. The results help to visualise the classification of measures.

### **1. Transition security. Hiring and firing regulations. Provisions of employment security.**

In **Belgium**, the industry-level CA for the Non-ferrous Metals Industry (2009-2010) establishes that companies are not entitled to proceed with a collective dismissal until all measures intended to safeguard employment have been exhausted. The employees undertake to discuss and accept possible changes to their terms and conditions of employment. At company level, various arrangements can be made to increase the employees' geographical, functional and organisational mobility. In the event of a dismissal for economic reasons, the employer undertakes to offer outplacement, regardless of the employee's age.

The CA has been declared generally binding, which means it is binding on all employers and white-collar employees in the non-ferrous metals industry, i.e. those falling under Joint Committee No. 224. Also in Belgium, the generally binding CA at industry-level for Mortgage Lenders, Savings Banks and Investment companies (2009-2010), establishes that employees who have been dismissed are automatically entitled to outplacement. The terms and conditions for outplacement will be determined at sector level.

In **Italy**, the Food and Beverage industry-wide CA introduced a right to precedence is introduced for seasonal workers or fixed-term workers (employed since 6 months at least) in case of hiring open-end contract workers

**In France**, the cross sectoral agreement on modernisation of labour market (January 2008) illustrates the role of social partners<sup>14</sup>, institutionally recognised since 2007, in the development of labour market regulation. As such, some of its provisions were to be implemented through legislative measures. As regards the content, this national agreement:

a) Plan a new form of termination of employment contract, i.e. the termination of open ended contracts by negotiated agreement, which is neither a dismissal nor a resignation. A procedure for ratification of the agreement by public authorities (director of labour, employment and vocational training at local level) in order to terminate the employment contract between the two parties is necessary. These provisions aim at making easier termination of the contract for the employer (no need to comply with laws covering dismissals) but employee is in this case entitled to benefit from specific payment as well as from unemployment benefits, which is new in France.

b) Create, on an experimental basis, a new form of fixed term contract (named “contrat de projet”). The latter may apply only to engineers and managerial staff. This contract may be signed for carrying out a precise project and comes to an end when the project is completed. However, minimum duration of the contract is 18 months (maximum 36 months). When the contract comes to an end, the employee is entitled to receive a special compensation and has a priority to get an open ended contract in the company. Sectoral collective agreements must allow the use of this kind of contract.

c) Establish new provisions related to the duration of probationary periods. Maximum durations depending on employee’s status (blue collar, clerk, and managerial staff) are planned. Generally speaking, a lower skill level corresponds to a shorter probationary period. In addition, notice periods in case of dismissal during the probationary period are planned: 48 hours during the first month; 2 weeks after 1 month; 1 month after three months.

Also in France, national agreement regarding Emergency Measures to Support Employment in the Metal Sector (May 2009) has been signed in the context of the financial, economic and social crisis and aims at proposing solutions in order to save employment both for the employees and the unemployed looking for a job but also for companies so that they can produce and innovate. This CA provides a system of **non profit work force lease** that enables companies facing economic difficulties to lease one’s workforce to another company, avoiding consequences of reduced working time or of lay offs. This can also improve skills and employability of the employee. The company leasing one’s workforce can maintain the skills of the employees concerned, the company receiving the workforce gain new skills and operational employees.

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<sup>14</sup> This agreement has been signed between three employers’ organisations (MEDEF; UPA; CGPME) and four representative union confederation at national level out of five (CFDT; CFE CGC; CFTC; FO).

This form of work has to be secured for all parties concerned in order to face the present difficulties and to rapidly recover a full activity. The labour contract is legally maintained with the employing company, there is a convention between the company leasing the workforce and the company receiving the workforce, this has to be non profit. The representatives of the employees of both companies have to be informed. No trial period but a probationary period can be proposed especially when one essential element of the contract is changed, which has to be first agreed upon with the employee. If an employee refuses the workforce lease, it can't be considered as a reason for sanction or lay off.

Concerning the employment of young people, social partners emphasise the importance of work contracts alternating training and work especially for the least qualified young people, efforts have to be made to help young graduates from problem areas to enter the labour market. Companies should employ at least 3% of their work force with an apprenticeship (*contrat de professionalisation*). If companies don't respect that, they will have a financial penalty (+20% of the apprenticeship tax).

Finally, also in France, the company CA in Rhodia foresees external mobility in case risks of job losses exist: if redeployment within the group is not possible, employee is entitled to benefit from a specific support to organise an external mobility (services provided by a dedicated body and very similar to those offered by the public employment service). If the employee gets a new job, the company may, under certain conditions and for a limited period of time, contribute to maintain his/her former wage ("*allocation temporaire dégressive*"). Moreover, employees accepting a new job before any economic redundancy is decided by the company are entitled to receive an additional grant from the company (corresponding to a maximum of 4 months wages). At last, agreement plans that employees planning to create their own company are entitled to a specific support (especially to draw up their business plan and better know public aids available).

### **Temporary agency work**

The treatment of employment security within flexicurity in one of the most flexible sectors as regards hiring and firing, such as temporary agency work, is interesting. Thus, in **Italy** the largest majority of agency workers are hired with fixed-term contracts by their employer agencies. The last national industry-wide CA on Temporary Agency Work (July 2008) intends to enhance job security: in case agency workers have been working in user-firms for at least 42 months, summing-up all the single missions for the same agency, they will be hired by that agency with an open-end contract (art. 43). There are also limitations to individual dismissals before the contract's end for fixed-term TAWs.

As regards income security, for the periods in which the agency worker is not hired by any user-company, agency worker will receive the so called "indemnity of availability" of € 700 per month. In case such a situation should protract for too long, the worker can be fired by the agency, receiving 700 euro (539 euro net) per month for a duration of six months (seven if the worker is over 50). 60% of this indemnity will be paid by the agency and 40% by the bilateral fund (called *Ebitemp*), which is jointly managed by the sectoral social parties.

In **Sweden**, in the same sector are nowadays covered by an agreement<sup>15</sup>, in all operations where these companies are active. It is probably the most covering agreement in the EU and thus interesting in a flexicurity perspective. All employees connected to an temporary agency have employment contracts with the same agency and are thus guaranteed a certain pay, no matter if they are actually employed by another firm or not. It is up to the agency to make sure that the employee gets a reasonable living, not to the user company that needs staffing. Therefore, it is not possible for the agency to use 'wage flexibility' (i.e. lower pay) as a means to compete with other enterprises with a permanent staff in the same business. Employment security (but perhaps not job security) is about as strong as for any employee in the private sector.

Outside this sector, although with the same intention to favour open-ended contracts, the high rate of fixed-term employment in **Spain** since the mid-eighties has led to clauses in several collective agreements regarding the conversion of fixed-term contracts into open-ended contracts. In many of these cases, this regulation is a mere reiteration of the possibilities opened up by legislation (legal reform of 2006) – for instance, the provincial CA in Avila (Iron and Steel Industry or the Bakery sector) or the provincial CA for the road transport of goods in A Coruña, 2008 -, mere recommendations – provincial CA of the offices sector in Valencia - and general commitments or references to other bargaining units. However, original elements exist in other cases, e.g. the 2009 agreement in the Road Passenger Transport Sector in the province of Badajoz establishes: "*When workers with fixed-term contracts have been hired for two consecutive years or four alternate years in the same undertaking, the undertakings commit to hire them with open-ended contracts*". In this field, another conventional clauses could be highlighted that give preference to hiring temporary employees who have previously rendered services in the undertaking or that tend to promote training for collectives in a worse situation in the labour market.

Concerning the use of positive flexicure measures addressed to hiring and firing, there are few good practices, and these are generally linked to restructuring processes in which negotiation processes usually take place (legally compulsory): that is, in collective redundancies, or in processes that affect global sectors –the textile industry-. The use of outplacement undertakings (which is still not regulated in Spain) in social plans is still a very limited practice.

Furthermore, although seemingly paradoxical, a clear example of the balance between flexibility and security can be found in forced retirement clauses in some agreements: for instance, the forced retirement of a worker at the age of sixty-five must be accompanied by making a temporary worker permanent or a part-time contract full-time in the 3rd national CA for Property Management and Mediation Undertakings published in 2009.

In the same sense as with atypical workers in Spain, in **Belgium**, collective agreements at industry-level for the Chemicals Industry and for the Non-ferrous Metals Industry, both enforced during 2009-2010 establish that after successive fixed-term employment contracts, an employee is directly employed in the same position

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<sup>15</sup> Agreement settled between their special employers' association, *Bemanningsföretagen* and the unions affiliated to the LO

under an open-ended employment contract, without an interruption of more than four weeks, there is no need for a new trial period and the seniority acquired under the fixed-term contracts is carried over.

In **Sweden**, hiring and firing is regulated in the Codetermination Act and the Employment Security Act. The engineering industry agreement thus only slightly modifies the general legislation. The most important clause regards short fixed-term contracts. An employer can, according to the agreement, hire a person for a period of between one and twelve months without first consulting the local union branch. The individual employment contract must be notified to the union. A short-term contract can further be prolonged to in all three years, if it is supported by a local agreement with the trade union – or if there is no local union branch present at the workplace. The employers are also allowed to hire students and retired people for shorter periods than one month without consulting the union. Yet the trade union can force an employer to renegotiations if it suspects the employer for ‘abuse’ of the clause, for example using extraordinary short-term contracts to avoid standard employer obligations.

The CA for the blue-collar workers in the municipality sector (July 2007 - March 2010) this fundamental principle for layoffs goes for employees with comparable jobs, that is, key workers have in practice both stronger job and employment protection than easily replaced workers. Fired workers do, with some exceptions, for a period of normally a year have precedence to new positions in case of new appointments at the same operation.

Another measure established in the same agreement and which affects numerical flexibility refers to part-time workers to whom shall as far as possible be offered at least 20 hours per week. Before new labour is hired, part-timers shall first, if the work tasks are not beyond her/his competence, get the opportunity to longer working hours. Because of the many different occupations covered by the agreement, that is, more or less all blue-collar occupations, some clauses are rather ‘open’ and should be seen more as guidelines for local-level negotiations.

According to the CA for white-collar workers in the private sector (April 2007 - March 2010)<sup>16</sup>, fired employees have precedence to new positions in case of new appointments at the same operation. This is under the preconditions that the employee have been employed at least twelve months during the previous three years and that s/he makes the claim within nine months of the firing date.

**Table 1. Transition security: hiring and firing regulations. Employment security**

Member	Flexicurity elements
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<sup>16</sup> CA between Teknikarbetsgivarna on the one hand and Sif Sveriges Ingenjörer and Ledarna on the other. The Union, which is the second largest Swedish union, was formed on 1 January 2008 with the merger of the two formerly biggest unions, for salaried employees Sif (manufacturing) and HTF (trade in the private sector). Since both Sif and HTF had existing industry-wide agreements at the time, agreements that have still not expired, both have been scrutinized in search for flexicurity.

States	Employment security	Hiring and Firing
<b>Belgium</b>	CA 2009 for the mortgage loans and savings: outplacement for dismissed employees	CA for the non-ferrous metallurgy industry: - work certainty clause for firing. - dismissal for economic causes: outplacement services - successive fixed term contracts  CA 2009 for the chemical industry
<b>France</b>	CA on Emergency Measures to Support Employment in the Metal Sector: non profit work force lease  CA Rhodia: specific support to organise external mobility (training and other serves). If the employee gets a job, the company may contribute to maintain his/her former wage under certain conditions and for a limited period of time.	CA on modernisation of labour market: - new form of termination of employment contract - “contrat de projet” - new provisions related to the duration of probationary periods - Companies should employ at least 3% of their work force with apprenticeships ( <i>contrat de professionalisation</i> )
<b>Italy</b>	Food and beverage industry-wide CA: a right to precedence for seasonal workers or fixed-term workers (employed since 6 months at least) in case of hiring open-end contract workers  Temporary Work Agencies (TWA) industry-wide CA: unemployment benefit, partially financed by the bilateral fund	CA on Temporary Agency Work: - “allowance for availability” during the non working periods of agency workers. - agency workers will be hired by the agency with an open-end contract if they have 42 months of “seniority” in user-firms, summing-up all the single missions for the same agency Non-ferrous Metals Industry: conversion of fixed-term contracts into open-ended contracts: no need for a new trial period; seniority acquired under the fixed-term contracts is carried over.
<b>Spain</b>		CA for Property Management and Mediation Undertakings - conversion of fixed-term contracts into open-ended contracts - hiring temporary employees who have previously rendered services in the undertaking - the forced retirement must be accompanied by making a temporary worker permanent or a part-time contract full-time
<b>Sweden</b>	TWA CA: temporary agency workers have employment contracts with the agency.	TWA CA: hiring for a period between one and twelve months without first consulting the local union branch. CA for white-collar workers in the private sector and quite similar in the blue-collar in the municipality sector: - certain “right” to precedence to be hired in the same firm for employees having work in at least 12 months in the previous 3 years, if the firm decides to recruit labour within 9 months after the employee got fired. - Before new labour is hired, part-timers shall first get the opportunity to longer working hours

## **2. Combining external flexibility with fighting segmentation. Improvement of equal access to employment for all. Equal treatment of atypical workers.**

In **Belgium**, the generally binding CA at industry-level for Mortgage Lenders, Savings Banks and Investment companies for 2009-2010 with the exception of a number of provisions which have been entered into for an indefinite period, establishes different clauses related to the so-called Solidarity Pact<sup>17</sup>. Labour and management will set up a working group to investigate whether it is necessary to propose a number of models to create 'final jobs' (*landingsbanen*) for employees with little seniority who are above the age of 55. Furthermore, labour and management undertake to take measures to ensure greater diversity in the workforce, i.e. stronger involvement by disabled employees, employees with little education, older employees and foreign-born residents, and to create equal opportunities for men and women. Moreover, labour and management will prepare to this end a non-discrimination policy and work to ensure equal education and training opportunities and increased recruitment from risk groups. Furthermore, equal opportunities for men and women must be created.

In **France**, the Electricity and Gas Industry collective agreement (2008) aims at promoting equal access to employment for men and women as well as active gender equality.

The following measures addressed to promote equal opportunities in the companies of the sector have been agreed:

- Information and communication about the jobs proposed in the sector especially towards young female students,
- Encouraging companies to recruit women corresponding to the ratio of female graduates in the fields the companies are interested, writing precise job announcement aiming at not reinforcing stereotypes
- Surveys on diversity of the jobs accompanied by internal communication should help attract women in male jobs and to promote internal mobility
- Training actions on jobs considered to be rather "male" jobs to attract women
- In order to enable women to change jobs, companies will favour work experience accreditation towards a qualification (VAE)
- Surveys on the identification of the least female jobs and the least male jobs, on the analysis of stereotype
- Internal communication on the jobs to attract women
- Adapted working conditions.

Another example in France can be found in the national collective agreement on pay in the banking sector (November 2008). As regards equal opportunities between men and women the following issues have been agreed:

- Efforts have to be made so that 40% of women reach managerial functions
- Gaps in the professional promotion and in the wages between men and women must be reduced.

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<sup>17</sup> The Act of 23 December 2005 on solidarity between generations promotes, amongst other things, the development of initiatives for older workers when setting up a training program, the development of initiatives to anticipate and fill potential vacancies and new techniques to encourage life-long learning.



- Eliminate any unjustified wage gap between men and women by the end of 2010. A diagnosis of the wage situation has to be made by staff representative organisations.

#### **The influence of law to mobilise collective bargaining**

As it happens in Spain, promoting equal access to employment for men and women as well as active gender equality in the French context may first appear as a way to create new rights for women rather than as a “flexicure” agreement. The law of 10 February 2000 opened a field of collective bargaining on the issue of equal opportunities concerning all industry policies and this agreement takes place in the framework of the law. As such, it is a good example of the strong influence of the law on the collective bargaining which determines the issues to be dealt with by the social partners.

Since 2007 it is compulsory by law in Spain to negotiate an Equality Plan between Women and Men in large undertakings which includes several measures aimed to favour equal opportunities of women, both quantitatively and qualitatively. Many large undertakings have already adopted this plan, especially those where women are largely present (retail, department stores, banking and finance). The plans included directly in the collective agreements of El Corte Inglés, Endesa, Repsol, Banco Santander, Banesto and Elcogas, amongst others, can be mentioned. The presence of clauses in some CA that implement positive discrimination can also be highlighted, as in the case of the General Agreement of the Chemical Industry sector of 2007 or the state level CA of administrative agencies of 2006.

In **Spain**, successive inter-professional agreements on collective bargaining (AINC in the Spanish abbreviation) at national level have extended the practice of including clauses banning any type of discrimination due to several reasons: gender –mentioned the most –, disability, nationality or age. According to official statistics at state level, this figure has increased, reaching almost 25% in 2007, and is especially important amongst sectoral agreements, since these affect more than 50% of the waged population covered by an agreement. For instance, within the large array of this type of agreement, the CA for Banking of August 2007 can be mentioned: it establishes up to four general declarations on gender equality.

The last AINC for 2007, extended to 2008, recommended bargaining of the following topics:

- The adoption of explicit anti-discrimination clauses that may be included as a general principle or in particular within specific sections of the agreement.
- Making the content of collective agreements suitable to current legislation or, given the case, improving on legislation, eliminating clauses that have been surpassed by legislative amendments as regards non-discrimination and the acknowledgement of equal treatment. This suitability extends also to contents regarding occupational risk prevention for maternity, lactation and reproduction, as well as the treatment of sexual harassment.
- Implementing the same working conditions to immigrants than to other workers as regards the form and type of hiring, wages, prevention and safety, classification and promotion, training and the right to social benefits, taking into consideration with sufficient flexibility those specific and exceptional situations that may arise as a result of the application of the permits scheme for family events when these entail the need for long-distance travel.

- Avoid the discrimination of older workers in accessing and maintaining employment.
- Contribute to establishing an equal framework for the development of the working conditions of men and women, promoting activities that eliminate obstacles towards equality and, given the case, including positive actions when the existence of starting inequality situations linked to working conditions is proven.
- Equal rights between workers hired part-time and with fixed-term contracts and workers hired full-time and with open-ended contracts.

### **Equal treatment of temporary agency workers**

Apparently, where social dialogue has concentrated the most has been in the negotiation of employment conditions of **temporary agency workers**. This proves the qualitative relevance of this new labour relationship. Experiences have been varied. Perhaps in this case, the path of collective bargaining has played an essential role by reaching agreements for workers in this sector<sup>18</sup>, levelling their employment conditions with those of the employees of the main undertaking. The concern for the gap existing with the latter is obvious.

**In Belgium**, according to the 2009-2010 industry-level CA for the Chemicals Industry (2009), the employer must pay a contribution to the Industry Training Fund equal to 0.20 % of the blue-collar employee's salary. These contributions are used to provide training for groups at risk of unemployment.

**In Italy**, starting from 2011 the Food and Beverage industry-wide CA has set up an integrative health fund for workers with open-end contracts and fixed-term if with a seniority of 9 months at least. It is financed by the companies with 10 euro monthly for 12 months. Starting in January 2013 the fund will be increased with a fee of 2 euro monthly in charge of the workers, after expressed request form him/her.

**In Spain**, this type of clause is starting to be included in some agreements – provincial CA of the supermarkets and self-service food sector in Barcelona for the years 2009-2013 -, although in some cases a legal dispute has been started.

**In Sweden**, equal access to employment is largely left to civil rights legislation. It *was* formerly pretty much a matter for collective bargaining, but since the late 1980s and early 1990s, there has been a move from regulating unfair treatment by collective agreements towards a civil law regulation. From the early 1990s, all forms of labour market discrimination have little by little been incorporated into civil law. This is thus now largely a legal matter, but it also seems that some is left to be done in practice, and that collective bargaining may still be a means for making this happen. In particular, 'equal access' was stressed by some journalists, both in Swedish TV and newspapers, who sent in similar applications for jobs in different names: one in a typically Swedish name and one in typically 'Arab' or 'African' names. The results were chocking, but were repeated by university students (slightly modified) and as a

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<sup>18</sup> See "The impact of new forms of labour on industrial relations and the evolution of labour law in the European Union". European Parliament. 2008

consequence the trade unions began to urge for application processes where names were not shown.

**Table 2. Combining external flexibility with fighting segmentation**

Member States	Flexicurity elements	
	Equal access to employment for all.	Equal treatment of atypical workers
<b>Belgium</b>	CA for the mortgage loans and savings: diversity, CA for the chemical industry: salary guarantee for pregnant employees	
<b>France</b>	Electricity and gas CA on equal opportunities (several integrated provisions)	
<b>Italy</b>		Food and beverage industry-wide CA has set up an integrative health fund for workers with open-end contracts and fixed-term under certain conditions (seniority of 9 months at least)
<b>Spain</b>	CA for Banking on gender equality 2007 National cross-industry agreement (AINC) recommendations on equality Different CA include Equality Plans between Women and Men in large undertakings	- 2007 National cross-industry agreement: equal rights between workers hired part-time and with temporary contracts and workers hired full-time and with open-ended contracts. - Provincial CA of the supermarkets and self-service food sector in Barcelona
<b>Sweden</b>	Labour market non discrimination incorporated into civil law.	

### 3. Facilitation of life long learning, anticipation of skills needed in the future. Increase of employability. Creation of individual budgets and trajectories for education and training.

In **Belgium** we find an example of combination of income and job security (during the career break, the employee receives unemployment benefits) with working time and functional flexibility in the generally binding CA No. *77bis* on time credit (career interruption)<sup>19</sup>. It provides for certain minimum requirements, meaning more advantageous provisions can apply at industry level and is applicable to both blue-collar and white-collar employees.

#### CA No. *77bis* on time credit in Belgium

This time-credit system could be partially applied to life-long learning purposes: employees can temporarily stop working, in whole or in part, for a certain period of time. A full suspension is only possible if the employee has worked for at least 12 months in the 15-month period prior to submission of the request for leave. Moreover, a partial suspension is only possible if the employee works at least  $\frac{3}{4}$ 's time. Employees must take their leave in blocks of 3 months to one year. A CA at industry or company level can extend the total length of the time-credit to 5 years over the employee's entire career.

The time-credit scheme covers two different kinds of leave: leave without a particular reason - intended to prevent burn-out and early retirement - and leave for a specific purpose which includes three different types: parental leave, leave to provide palliative care, and leave to care for a family member.

<sup>19</sup> The agreement was entered into force on January 2002 and has been revised on several occasions, the last one date from 20 February 2009 (CA No. *77quinquies*).

In short, the reason for the career break may differ, but the overall purpose of the system is to improve the work-life balance.

During the period of suspension, the employer does not have to pay the employee's salary. Rather a special allowance is paid by the National Employment Office. Please note that in principle such an allowance will only be paid for a period of up to 12 month throughout the employee's career.

There is no automatic right to a career break. For employees in undertakings with no more than 10 employees, a time credit can only be taken with the employer's consent. In undertakings with more than 10 employees, no more than 5 % of the total workforce can benefit from a career interruption at any given time.<sup>20</sup> Under certain circumstances, employees can reduce their working time by 20 % for up to 5 years (and at least 6 months).

Specific rules with respect to career interruption apply for employees 50 years of age or older. Older employees are entitled to reduce their working hours, by one fifth or one half, over an unlimited period of time. Furthermore, employees above the age of 50 have the right to a reduction in working time.

While on leave, the employee is protected against dismissal, meaning the employee cannot be dismissed for reasons related to the career interruption.

In the industry-level CA for the Non-ferrous Metals Industry (2009-2010) in Belgium employees are entitled to take a time-credit of up to three years during the course of their career. However, no more than 5 % of the total workforce can benefit from a time-credit at the same time. Ailing companies or those which are restructuring can deviate from this threshold with the approval of the competent joint committee.

**In France**, the cross sectoral agreement on modernisation of labour market (January 2008) already mentioned above established two main measures on this issue:

**a) Lifelong learning and employment security**

- The agreement improves the "individual right to training" (*droit individuel de formation*), a right which was created in 2003 through another important cross sectoral agreement on lifelong learning. Main issue related to this individual right was related to its transferability in case the employee loses his/her job. The agreement thus plans the transferability of this right under certain conditions. Employee losing his job and covered by the unemployment insurance scheme may use the number of training hours he accumulated in the framework of the DIF while being unemployed. In case the employee gets a job in another company, he may also use the training hours accumulated in the new company.
- The agreement creates a new tool to foster employability and securing career paths of employees: a periodic occupational assessment. This assessment aims at regularly listing in a forward-looking way employees' skills in order to enable them to assess their own needs and make them known to their employer

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<sup>20</sup> A collective bargaining agreement at industry or company level can provide for a deviation from these limits. If more than 5 % of the workforce benefits simultaneously from a time credit, a planning mechanism shall be put in place in order to guarantee the continuity of work within the company. The employer can postpone the start of a time credit by up to 6 months if it has serious internal or external reasons for doing so (e.g., organisational needs, continuity issues, etc.).

**b) Skills anticipation through human resources planning** (*gestion prévisionnelle des emplois et des compétences*). This approach aims at fostering anticipation of economic change and their consequences on skills and employment. In 2005, law introduced a three-yearly obligation to negotiate such an overall forward looking approach in companies with more than 300 employees. The agreement aims at stressing the objectives of this approach (in brief, making career paths secure) and at fostering the development of the latter. In respect to this, the agreement appears to be an educational tool.

At company level, the Rhodia CA implemented the above mentioned 2005 Labour law very soon on forward looking employment and skills management (March 2007). The agreement covers all subsidiary companies composing the group in France; it is partly a framework agreement as subsidiaries or units covered may adjust some of its provisions through local negotiations. It refers to two main aspects:

**a) Tools for human resources and skills management:**

- The Rhodia agreement plans the setting up of a strategic dialogue body (*instance de dialogue stratégique*). This body aims at allowing a permanent exchange between management and employees' representatives on strategic orientations of the group. On employees' side, this body put together representatives from unions in the group as well as the secretary of the group works council and the secretary of the European Works council.
- In addition, group is committed itself to present its overall strategy every three year to employees 'representatives within the group (group works council but also works councils in the different subsidiaries).
- In each unit of the group, manager has to draw up yearly a diagnosis about employment and skills trends. The diagnosis has to identify elements which may impact employment (from both quantitative and qualitative points of views) at short and mid term, analysing both "strategic jobs" (*métiers stratégiques*) and "threatened jobs" (*métiers critiques*).
- On the basis of the diagnosis, collective and individual action plans in each unit are to be planned (including for instance training actions). Specific individual action plans focused on certain categories of employees (*called "employés les plus exposés"*) have to be drawn up. These plans are focused on low skilled workers, older workers, employees whose jobs are identified as threatened ones. A yearly follow up of these provisions is planned

**b) Internal and external mobility / training.** The agreement set up specific tools to foster mobility within the group. It's especially the case of employment individual passport ("*passeport individuel de potentiel d'emploi*"). These passports aim at summarizing career path of employees within the group (jobs within the group, trainings achieved, skills) in order to facilitate internal mobility.

- Internal mobility in case skills shortages are foreseeable: employees have a priority to get jobs available in the group. In order to get an available job, they are entitled to request individual training actions from the management. In

addition, training plans at company level are to focus on trainings necessary to address foreseeable risks of skills shortages.

- Internal mobility in case risks of job losses exist: specific bodies to support internal mobility of employees are planned. In case of threats on specific jobs are identified through the annual diagnosis, employees affected may be supported to prepare their mobility within the group: identification of jobs available within the group ; definition of a career plan. When an opportunity for internal mobility is identified, a detailed recruitment procedure has to be followed. In this framework, employee is to benefit from different measures to test his new job but also to be well integrated.

### ***Agreements on internal flexibility in Italy and Sweden: management of time banks***

In **Italy**, the negotiation policy of trade unions is to exchange higher flexibility of working hours with an increase of paid leave. There is a “time bank”, in which excess hours can be compensated either with time off or with training. Pirelly Tyres CA has implemented the time bank account - agreed at industry-wide level in 2000 -, being interested in exchanging full and non-negotiated working hour flexibility with salary increases and substantially granted on an individual basis.

In **Sweden**, the average weekly working hours may not exceed 48 hours in one calendar year (normal working hours = 40 h/week). If both parties agree, it is however possible to modify this locally and there are also other limitations for shift work. Moreover, each week time is ‘transferred’ to a time bank for each fulltime employee, based on a scale of 94 minutes for daytime work, 202 minutes for two-shift work and 82 minutes for other kinds of shift work.

These time banks are very important for internal numerical flexibility (working time flexibility). An employer has a strong prerogative regarding the use of overtime. If the employees are given notice ‘in due time’ (which is not specified), a worker must show special reasons for not accepting to work overtime. The total use of overtime is limited to 50 hours per month and 150 hours per year, but even this might be exceeded if both parties agree at local/firm level. In return the individual worker has a great say on the use of the time bank. S/he can ‘withdraw’ invested time either as paid vacation or in cash, or use it for pension funds. The employer do not have to accept paid leave if there is a too strong risk for a negative impact on the company’s performance, but still the time bank is a means for the employees to counter negative personal effects of internal numerical flexibility and also to facilitate a positive work-life-balance.

Training clauses are relatively frequent in **Spanish CA** (more than 40%), most frequently training plans, aids for workers to study and paid leaves of absence. However, moving from the quantitative to the qualitative plane, experts are quite critical with the conventional regulation of training, especially as regards provincial sectoral agreements –the most widespread in the Spanish system-, especially in small and medium-sized enterprises. Moreover, the treatment thereof is excessively general and is not linked to the development of future lines of activity, innovation and/or the implementation of new technologies in the undertaking. Only in the case of some larger undertakings are mere general commitments exceeded – for instance, the CA in Alstom Transportes of August 2006 -.

Agreements reached on training and professional career development are also infrequent. However, this topic is contained quite frequently within the codes of conduct of large undertakings, especially those in technological sectors, perhaps because this subject is still considered to be within the realm of business management.

The CA for the blue-collar workers in the municipality sector (July 2007 - March 2010) in **Sweden** establishes that employees who take part in courses, conferences etc. shall keep their pay during that time. If the education/training takes place outside the normal working time, the employee shall be compensated with one free, fully paid hour per hour spent on the education/training.

The CA for white-collar workers in the private sector (April 2007 - March 2010)<sup>21</sup> establishes the same right to get an individual time bank gets which each employee disposes after agreement with the employer. Concerning skills and competence, the same agreement establishes that each enterprise has a basic responsibility to provide for the employees' need to further their competence, but the obligation is mutual, and the employee must do the best to meet the company's competence needs. The need and definition of 'competence' shall draw on the enterprise's business idea and long-term operations.

**Table 3. Increase of employability**

Member States	Flexicurity elements	
	Life long learning	Anticipation of skills needed
<b>Belgium</b>	<p>CA 2009 for the mortgage loans and savings: life-long learning</p> <p>CA 2009 for the mortgage loans and savings: pressure of work and stress, enduring undertaking: creation of 'landing jobs'</p> <p>CA 2009 for the chemical industry: Industry formation Fund</p>	<p>CA of 19 June 2009 for the non-ferro metallurgy industry: 'industry CV'</p>
<b>France</b>	<p>Rhodia company agreement : support for internal and external mobility</p> <p>ANI 2008 : periodic occupational assessment (art.6)</p> <p>Metal industry CA: - tutorial system for young people to gain minimum industrial skills (art.20) - organisation of training programmes (art.19)</p> <p>ANI January 11 2008 : Transferability of individual right to training (art.14)</p> <p>Rhodia company agreement: individual employment passport (art.16) / support</p>	<p>Promotion of VAE (accreditation of work experience towards qualification): - Metal industry CA (art.6) - Gas and electricity CA (art. 2.2)</p> <p>ANI 2008 : human resources planning and skills management (art.9)</p> <p>Rhodia company agreement: human resources planning and skills management (tools: yearly diagnosis on skills and employment evolution, etc. )</p>

<sup>21</sup> CA between Teknikarbetsgivarna on the one hand and Sif, Sveriges Ingenjörer and Ledarna on the other. The Union, which is the second largest Swedish union, was formed on 1 January 2008 with the merger of the two formerly biggest unions, for salaried employees Sif (manufacturing) and HTF (trade in the private sector). Since both Sif and HTF had existing industry-wide agreements at the time, agreements that have still not expired, both have been scrutinized in search for flexicurity.

	for internal mobility (art. 17. to article 23)	
	Banking sector CA: Training bonus for life long learning (art.3)	
<b>Italy</b>	Pirelli Tyres CA: time-bank available	
<b>Spain</b>		

#### **4. Enhancing functional flexibility combined with employment security. In the case of partial unemployment for a limited duration, enable income and job security combined with training to enhance employability.**

We shall analyse two collective agreements in this section which were reached in France and Belgium in the context of the current economic recession, the bargaining of which was aimed specifically at adopting measures to this end. The clauses established combine elements of internal flexibility (working time) with job security (temporary suspension of contract with guaranteed return to activity), as well as flexibility in wages, with added State financing in the form of social protection.

On 19 June 2009, **Belgium** adopted an act which allows struggling companies to temporarily underutilize workers in order to prevent structural dismissals insofar as possible. These measures, depending on the state of the economy and possible harmonisation of the status of blue-collar and white-collar employees, include: (i) a temporary collective reduction in working time and (ii) temporary crisis measures with a view to adapting the volume of work through a temporary reduction in individual working time (crisis time-credit) or through a temporary collective suspension of employment contracts (crisis unemployment). The system of temporary unemployment, which is normally reserved for blue-collar employees, has been extended to white-collar employees for a fixed period of time, in accordance with the terms and conditions of the act.

CA of 30 June 2009 on a temporary collective reduction in working time or full or partial suspension of employment contracts was entered into within the framework of this act. In this exceptional context derived from economic recession, the agreement establishes the following measures that may be considered to be relevant from a wide flexicurity perspective:

- Partial or full suspension of employment contracts ('crisis unemployment'): in the event of a shortage of work due to economic circumstances, the employment contracts of white-collar employees can be suspended in part with at least a two-day work week. The employer can also opt for a total suspension of up to 16 weeks or a partial suspension of up to 26 weeks. The employee will receive unemployment benefits from the National Unemployment Office. The employer should pay a supplementary allowance per employee, equal to its contribution for a blue-collar employee on unemployment benefits.
- Temporary decrease in working time ('crisis time-credit'): a temporary reduction in individual working time of 1/5 or 1/2 can be applied to one or more employees within the company with the express consent of the employees concerned, for one to six months. Within certain limits, the employee will receive a monthly



allowance from the Unemployment Office to make up for the reduction in working time.

In **France**, the already mentioned national agreement regarding Emergency Measures to Support Employment in the Metal Sector (May 2009) has been signed in the context of the financial, economic and social crisis. The background of the agreement is how to use this period of crisis in order to develop skills and qualifications of the employees so that companies can overcome the crisis and be ready when the economic situation recovers by maintaining their innovation and adaptation capacities. The following measures can be highlighted:

- Reduced working hours have to be implemented in the framework of an agreement between the State and UNEDIC (organisation managing unemployment insurance) should aim at guaranteeing the labour contract and ensuring a better reduced working hours benefits (75% of the gross hourly salary) thus reducing the cost of this measure for the companies. This period of reduced working hours should be accompanied by training actions.
- Training and reduced working hours aimed at maintaining and developing employees' skills and qualifications necessary for the companies. Every existing training programmes (individual right to training, training plan etc) should be used to reinforce employees' employability. The training actions can take place during or out of the working time.
  - i) Provision 5 emphasises the prevention measures of reduced working time: a company agreement should be signed to enable employees to use their individual right to training during the working time. This provision is valid if an agreement is signed between the employer and the employee by June 30, 2010. Employees' representatives have to be informed. This also applies for small companies. The joint training body managing mutual training budget of the metal industry will have to pay for a part of the salary of the employee attending a training action.
  - ii) Provision 6 points out the need to implement training during a period of reduced working hours in the form of training action plan, skills evaluation, accreditation of work experience towards qualification, individual right to training. Public authorities will finance a part of the salary of the employee attending such a training during the period he/she is not working in order to reduce the cost for the employers and to develop skills and qualifications. The financial support of the employee (reduced working hours allowance + training allowance) should not be higher than the salary of the employee.

**Table 4. Enhancing functional flexibility combined with employment security. In the case of partial unemployment for a limited duration, enable income and job security combined with training to enhance employability**

MS	Flexicurity elements
<b>Belgium</b>	CA 2009 on a temporary collective reduction in working time or full or partial suspension of employment  CA 2009 for the paper and the cardboard industry: crisis time credit and crisis unemployment
<b>France</b>	Emergency Measures to Support Employment in the Metal Sector (May 2009): reduced working hours and training

## **5. Working time arrangements conducive to firms' and workers' demands. Availability of various leave schemes. Active promotion of gender equality.**

In **Belgium**, we can quote the above detailed mechanism established in the CA No. 77bis on time credit for a specific purpose (see 5.3).

In **France**, the Electricity and Gas CA has developed an approach of promotion of career paths with the following topics:

- To give women access to functions with high responsibilities
- By organising training in order to help women change jobs and / or actions of accreditation of work experience to obtain a qualification. Therefore training sessions have to be adapted: decentralised, short and based on units. Access to training is made easier by part V aiming at balancing work and family life
- Parental leave within a limit of 3 years will be taken into account to calculate seniority.
- During parental leave, companies commit themselves to help the person maintain a link with one's working team in order to facilitate the return to work on the basis of interviews before the leave, interviews to prepare the return, professional evaluation.
- In order to facilitate equal opportunities companies have to define a work organisation better adapted to part time work which is not discriminating in the career path management.

As regards the balance between work and family life, the agreement proposes the companies to redefine

- their work organisation by using new technologies to enable employees to attend meetings or trainings without moving, meetings have to be organised during the working time and not after
- some measures to manage paternity such as co-financing child care systems, provisions allowing parents to be absent when the child is sick is open to all fathers, the conditions of father leave (full paid between 11 and 18 days) have to be reminded to all new fathers.

Finally, as regards salary equality some calculation methods have to be implemented in order to measure the salary gaps between men and women whatever the type of salary (main salary, variable salary etc) could be. It was stressed that maternity leave should not be a handicap for the salary evolution. This measure has been agreed according to the law of March 23 2006

In **Spain**, a large proportion of the aforementioned Equality Plans, which large undertakings are required to negotiate, incorporate measures aimed at conciliating personal and professional life. The most representative trade unions and employers' organisations have also recommended as much in a joint document.<sup>22</sup> However, the experts point out that the complex Spanish bargaining system, with more than 5,000 agreements enforced, will entail an unequal degree of incorporation of this topic and

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<sup>22</sup> "General considerations and best practices on equal opportunities in Collective Bargaining", approved by the Monitoring Committee of the Collective Bargaining Agreement 2003

of legal rights on this subject<sup>23</sup>. The following examples may be mentioned: the CA in the undertaking Buhler, S.A and, similarly, the regional CA for Accommodation in the Region of Madrid in 2008, create a Conciliation Council to assess the impact on undertakings of a reduction in weekly and annual working times, as well as their distribution to promote the conciliation of personal and professional lives of workers in the sector<sup>24</sup>.

The greatest concern to this regard, which entails greater development and protection, appears in the sphere of Public Administration – the Plan for Gender Equality in the General State Administration of 2005–.

**Table 5. Working time arrangements conducive to firms’ and workers’ demands. Availability of various leave schemes. Active promotion of gender equality**

Member States	Flexicurity elements	
	Leave schemes and combination work and care	Ppromotion of gender equality
<b>Belgium</b>	2009 (CA No. 77 <i>quinquies</i> ) on time-credit  CA 2009 for the non-ferrous metallurgy industry: time credit for older employees  CA 2009 for the chemical industry: time credit, national CA No. 77bis on time credit	
<b>France</b>	Gas and electricity industry CA: approach of promotion of career paths through active gender equality and some measures on combination of work and care	Gas and electricity industry CA: promotion of career paths form women to reach jobs with higher responsibility
<b>Italy</b>		
<b>Spain</b>	Equality Plans in large undertakings incorporate measures aimed at conciliating personal and professional life	
<b>Sweden</b>		

## **6. Development of business potential. Promoting job quality, including health and safety and representation security, and innovative work practices/social innovation.**

### **Promoting job quality**

Job quality is related to collective rights. Workers representatives and unions within the undertaking positively influence the quality or working conditions, as different studies suggest. As example, in **Italy**, agency workers have now the right to elect their own delegates at three different levels:

- national (for agencies with offices spread around the country),
- territorial (nominated in this case by the external unions),

<sup>23</sup> C. MOLINA; Guide on the conciliation of personal and professional life, available at [http://www.juntadeandalucia.es/empleo/carl/negociacion/guias\\_negoc\\_colectiva/10\\_conciliacion\\_vida\\_laboral\\_y\\_familiar.pdf](http://www.juntadeandalucia.es/empleo/carl/negociacion/guias_negoc_colectiva/10_conciliacion_vida_laboral_y_familiar.pdf), page 61 and following

<sup>24</sup> Several Authors, Analysis of collective bargaining in the Region of Madrid from a Gender perspective. Review. (coord. D. De la Fuente) pg. 182

- workplace.

At workplace level, agency workers have the right to elect one delegate when the company-user hires more than 30 agency workers for more than 3 months. These delegates normally act beside the standard workers union representation of the company-user.

In the controversial issue of contracting and subcontracting in **Spain**, resulting from the promotion thereof provided by the 2006 legal amendment (art. 42 ET), clauses have been included in CA which acknowledge the rights of workers' representatives in the main undertaking, by means even of establishing *intercontract councils*: for instance, the 2nd Interprofessional Agreement of Catalonia 2005-2007; the Agreement creating the Intercontract Safety and Health Committee at the Repsol Industrial Estate in Puertollano<sup>25</sup> or the CA in Telefónica 2008, within the article on occupational safety and health for contract workers.

With regard to the incorporation of telework as a new form of work organisation, its entry in collective bargaining in Spain has been minimal after the passing of the European Agreement. However, in the last few months, a greater interest on this topic has taken place in collective agreements: for instance, the industry CA of the Chemical sector, and the CA at undertaking level in Telefónica.

### **Social and economic innovation**

In **Belgium**, the generally binding industry-level CA for the chemicals industry 2009-2010 for all employers and blue-collar employees in the chemicals industry, i.e. those that fall under Joint Committee No. 116. establishes the payment with **eco-vouchers**.

Companies which are not bound by a CA at company level that provides for an increase in purchasing power are entitled to grant eco-vouchers to their blue-collar employees as from 1 January 2010. According to national CA No. 98 of 20 February 2009, eco-vouchers can be used solely to purchase ecological products and services. They are an employee incentive, similar to meal vouchers, and are therefore exempt from social security contributions and taxes. This initiative not only increases employees' purchasing power but is also intended to increase environmental awareness in this target group. According to the CA of 1 April 2009, the maximum value per voucher is EUR 250. Part-time employees are entitled to eco-vouchers under the same conditions as full-time employees.

### **Decent work**

In **Belgium**, the CA at industry-level for Mortgage Lenders, Savings Banks and Investment companies in Belgium, labour and management undertake to invest only in ethical funds, i.e. funds that do not violate the ILO principles.

In **Spain**, the promotion of decent work related to contracting and subcontracting labour has been developed firstly through Social Responsibility, by means of codes of conduct approved unilaterally by the undertaking which sometimes include certain rights, especially with regard to the work of young persons or work safety and health.

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<sup>25</sup> Javier Calvo in "Amendments in the legal scheme of subcontracting " in Several Authors, *The 2006 Labour Reform Lex Nova*, pg. 134 and following

This trend has also transferred to collective bargaining in some cases: for instance, State CA for Daily Press.

### **Appropriate management of labour migration**

In **Spain**, the access or not to employment by non-European Union foreign nationals is regulated by State legislation. Collective bargaining may include, at most, clauses that ban the discrimination of migrants due to nationality; or, on the other hand, that regulate the transport and accommodation conditions thereof (especially in the agricultural and cattle-raising sector)<sup>26</sup>, explicitly mentioned with regard to training or occupational risk prevention processes: for instance, the provincial CA for the Public Construction and Works sector in Tarragona, 2005-06; or, also, that try to adapt holidays and rest periods to the religious needs of some of these collectives: for instance, the provincial CA for the Agricultural and Cattle-raising sector in Almería, or CA of the same sector in the autonomous cities of Ceuta and Melilla -.

**Table 6. Promoting job quality and innovative work practices/social innovation**

Member States	Flexicurity elements	
	Job quality	Work/social innovation
<b>Belgium</b>	CA 2009 for the mortgage loans and savings: pressure of work and stress, enduring undertaking	CA 2009 for the non-ferro metallurgy industry and CA of 1 April for the chemical industry: eco vouchers
<b>France</b>		
<b>Italy</b>	Collective rights in TAW CA and sector	
<b>Spain</b>	Subcontracting: rights of workers' representatives in the main undertaking (cross-industry CA in Catalonia)	
<b>Sweden</b>		

### **7. Allocating resources cost effectively while relating pay and performance in a fair and transparent way. Strengthening competitiveness. Increase of productivity link between wage development and the economic cycle/productivity growth. Variable pay schemes.**

In **Italy**, Pirelli Tyres CA signed in 2005 and confirmed even after, introduced the concept of performance-related pay. The criterion is the following: 42% is related to the volume produced, a further 42% to the quality and the remaining 16% to presence. The social partners have agreed to meet on a monthly basis to assess the agreed parameters after having verified the following:

- a) expected result trends,
- b) the definition of new targets and related parameters.

In **Spain**, the conclusion reached from statistical data –not always reliable in this case due to terminological confusion and the lack of exhaustive control on the information supplied- and studies on this subject is that sectoral bargaining largely maintains a traditional concept of wage. Original techniques or instruments are only included on

<sup>26</sup> Art. 48 of the aforementioned CA for Agriculture and Cattle-raising in Almería.

rare occasions and there is a prominence of traditional schemes in which fixed wages prevail.

All in all, a progressive trend to develop wage systems based on worker productivity (industrial activities, in general) can be observed in undertakings, although in most cases they are the result of agreements or pacts at undertaking level that are not reflected in official statistics. The establishment of wage systems linked to an assessment of performance or compensation based on competences or results entails a parallel process of individualisation with regard to wages, which means a different treatment of workers and hence the breaking up of the collective. Objective-based wage systems are relatively normal –especially so-called “bonuses”- compared to formulae such as stock options which are less frequent.

Neither is it rare to create a specific professional group or category for workers that have recently entered the company, with a lower wage.

In **Sweden**, most clauses on wage formation principles of the engineering Industry CA that in some sense address flexicurity emanate from a vivid debate on decentralization and flexibility in the early 1990s. The agreement states that even though remuneration is individual within the frames of the agreement, the wage setting principles must be transparent for the individual worker and so must also the principles for how s/he can increase the pay. The same clause states that wage discrimination is not acceptable. This statement is made to strengthen the existing legislation by pressing for local analyses, jointly undertaken by employers and trade unionists. Pay formation in practice emphasizes the flexicurity perspective: a decent income should be granted by a monthly remuneration to guarantee ‘wage security’, including detailed norms for minimum wages etc., while complementary bonuses etc. might be added to promote employer demands on productivity growth and competitiveness.

Furthermore, the already mentioned above CA for white-collar workers in the private sector establishes that wage setting shall be differentiated on individual or other bases. Continuous validation of both jobs and employees is ‘a good ground’ for pay setting. Minimum salaries and also minimum salary increases are decided by the agreement. Yet there is plenty of room for local or firm level systems for individual distribution.

**Table 7. Increase of productivity link between wage development and the economic cycle/productivity growth. Variable pay schemes**

Member States	Flexicurity elements	
	Variable pay schemes	Lower pay
<b>Belgium</b>		
<b>France</b>		
<b>Italy</b>	Pirelli Tyres CA 2005 introduced the concept of performance-related pay	
<b>Spain</b>	Usual in CA at company level	Existing clauses in several CA with lower wage specific professional group or category for workers that have recently entered the company
<b>Sweden</b>	Engineering Industry CA: though remuneration is individual, wage setting principles must be transparent. Wage	

	discrimination is not acceptable CA for white-collar workers in the private sector: wage setting shall be differentiated on individual or other bases	
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## 5. Information on the recording system of CA at national level and assessing other tools

### Belgium

All collective agreements concluded in the National Labour Council (national level bargaining agreements) and practically all collective agreements concluded in Joint Committees (sector-level) are published in the Belgian state gazette (Belgisch Staatsblad / Moniteur Belge) and in this way become public and official.

Company-level collective agreements are not officially published but they are registered. In order to receive the official legal status of a collective agreement (as recognized under the 1968 Act), this must be filed and registered at the Office of the Clerk of the Service for Collective Labour Relations of the Ministry of Employment, Labour and Social Dialogue. The deposit is undertaken by one of the parties. Only third-parties that show a relevant interest and pay a fee can ask a copy of a filed enterprise-level collective bargaining agreement.

The Federal Ministry of Employment has taken the initiative to publish on their website the collective agreements concluded at sectoral level.

### France

All collective agreements have to be registered at the Ministry of Labour: industry and cross industries agreements at the Ministry headquarters (Direction Générale du Travail), company levels agreements at the Ministry territorial units (DDTEFP). The ministry issues yearly a balance of collective bargaining (Bilan annuel de la négociation collective). An advisory council, called National Commission for collective bargaining, has a say in that balance.

Industry levels agreement and computerized data base. At national level, there is a central and computerized data base which registers and analyses around 1000 agreements yearly at both cross industry and industry levels. The role of this data base consists only in collecting and disseminating information about collective agreements. It is neither an assessment tool nor a measure of enforcement. This data base offers basic key information for each collective agreement and brief contents analysis. It is not accessible by a broad public (which can consult collective agreements through official Bulletin and a legal website called Legifrance). The computerized data base is not used as a monitoring tool. Furthermore there is no item “flexicurity” in the data base.

Company levels agreements. Registered by the territorial units of the Ministry, they do not belong to a computerized data. Information available is very basic: number, dates and topics covered. Qualitative – and sometimes quantitative studies- are carried out but not on a systematic basis.

## Italy

The Italian CA-databases and surveys – either National and territorial – are usually characterised by partial samples, normally excluding small and very small enterprises, or even by a lack of regular frequency in the case of sample surveys which pretend to be statistically representative. CA-databases are often organised autonomously by national and local social partners associations; directly or indirectly, in order to better inform the collective bargaining actors before and during negotiations. They are usually formed by samples collected with the collaboration of the local and company reps. Without any National coordination of the National and Regional archives they normally adopt different criteria of clustering/classification.

The National Archive of the decentralised CAs is the most important CA-database, organised and hosted by the tripartite *National Council for Labor and Economy* – CNEL. According to a law of 1986, the CNEL has mandate to collect all the National industry-wide CAs – either in the private and public sectors – and a considerable number of CAs subscribed at the second decentralised level. This Archive is articulated in two different levels: a) *current*, containing all the CAs still in force, b) *historical*, containing the CAs of the past. The texts of the CAs are sent to the Archive by the social partners and are transferred into an electronic (computerised) database, according to a common frame and code of classification, agreed with the experts of the Ministry of Labor. With regard to the decentralised CAs of the private sector, the CNEL's database is composed by a statistically meaningful sample organised by sectors, size and territory. The sample doesn't pretend to be entirely representative of the national situation, being limited to the companies who bargain only.

*The CGIL's database of undertakings CAs contains more than 6.600 texts, distributed according to their date of stipulation during the decade 1996-2006. The collective agreements are archived using a code of 70 different items, grouped in 13 chapters. Each CA is sent to the CGIL's database by the local structures (at undertaking and territorial level) of this trade unions confederation. The CA-database is computerised and can be consulted on-line ([www.cgil.it](http://www.cgil.it)).*

Among the regional CA-databases, one of the most important and efficient is traditionally the one organised by the IRES Emilia Romagna (see [www.ireser.it](http://www.ireser.it)). Created in 1994 and coordinated by Loris Lugli, it collects and monitors CA texts signed by the workplace reps in the region's undertakings of the private sector. Three reports have been already published (1991/1993 and 1994/1997). The last report include the collective bargaining in the 15 years period between 1991-2005<sup>27</sup>. Today the IRES CA-database consists 11.647 texts, signed at regional level during these years.

## Spain

All Spanish Statutory collective agreements at sector or undertaking level must be registered at the corresponding regional or state labour authority accompanied by a

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<sup>27</sup> In Lugli e Tugnoli, *La contrattazione decentrata in Emilia Romagna dopo il 1993: un decennio di negoziazione tra moderazione salariale e regolazione sociale*; in "Sociologia del lavoro", n. 109/2009.



statistical record which includes information regarding both the scope of implementation, the bargaining parties and contents<sup>28</sup>.

In turn, these records are included in a computer system and several of the variables are published either in the Annual Labour Statistics Report or the Collective Agreements Statistics which are published digitally on a monthly and annual basis. Both reports are published by the Ministry of Labour. Both publications contain relatively large historical series, although most figures refer only to certain aspects such as personal coverage, territorial and sectoral scope, wage increases and working days. However, at times other issues are included which are of interest. It must be pointed out that the figures are provided by the bargaining parties and are not reviewed by the administrative bodies; this gives rise to doubts with regard to certain figures on occasion, especially in certain sectors such as the agriculture and livestock sector.

Other paid –WESTLAW- and free private databases exist. However, the problem lies in unpublished agreement texts.

The National Consultative Committee on Collective Agreements has carried out both sectoral and transversal studies for many years which are updated regularly and which are available in its website. Similarly, the Economic and Social Council prepares an annual report on the socioeconomic and employment situation in Spain which includes a chapter on the evolution of collective bargaining.

Studies from the main social partners

The main Spain trade union and employers' organisations usually carry out general studies or surveys (e.g., Spanish Employers' Confederation- CEOE) on the collective bargaining process<sup>29</sup>, as well as on specific issues such as, for instance, the regulation of telework in agreements, the conciliation of personal and professional lives, the regulation of the use of ICT in agreements or other current issues. These studies, and given the case the monitoring centres of collective bargaining in these organisations, are of special interest inasmuch as they usually have access to –and occasionally publicise- agreements at undertaking level which are excluded from official statistics as they are not registered or published by the Spanish Official Journal (BOE) due to their specific and partial scope –which make them different from collective agreements-.

Finally, regionalisation and sub-regionalisation of collective bargaining in Spain must be pointed out. As a result, Autonomous Communities, or Regions, have progressively paid attention to the study of collective bargaining processes that have taken place in their territory since the nineties. In this field, the Andalusian Council on Labour Relations has carried out studies through a series of records on collective bargaining which were incorporated in digital format since the mid nineties. Since

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<sup>28</sup> The content of these records –different for agreements at undertaking and sector levels- may be consulted in the Ministry of Labour and Immigration website:  
[http://www.mtas.es/es/empleo/hojas\\_convenios/indice.htm](http://www.mtas.es/es/empleo/hojas_convenios/indice.htm)

<sup>29</sup> The collective bargaining monitoring centre available below is of special interest:  
<http://www.observatorionegociacioncolectiva.org/observatorioNegociacionColectiva/menu.do?Inicio>

2002 this record is carried out by civil servants, as opposed to the abovementioned records, using the agreement text as basis –hence, the information is contrasted- and investigates more than one thousand three hundred issues covering all aspects that are usually regulated in collective agreements.

Certain limitations to the current database of the Ministry of Labour can be observed: limitations derived from records filled in by the bargaining parties and the fact that the database and its digital use for publication usually prioritize wage and working time issues. For this reason, the updating of this database is advocated from a perspective that takes into account other aspects that are more closely linked to flexicurity, quality of work and working conditions. In this line, national experts seem to follow the stance of the European Economic and Social Committee report “Flexicurity (dimension of internal flexibility – collective bargaining and the role of social dialogue as instruments to regulate and reform labour markets)”<sup>30</sup>.

### **Sweden**

There are no ‘CA-databases’ in Sweden. Nor are collective agreements collected at any cross-sectoral level by trade union or employer confederations. Industry-wide agreements are however normally printed, which means that they are, according to Swedish law, collected by the National Library of Sweden, Stockholm.

Each trade union member or individual employer who is covered by a CA has access to the full content of both the national, sectoral agreement and complementary firm-level ones, either as a printed booklet or on Inter-/intranet – or in many cases both. Yet neither employers’ associations nor trade unions are keen to spread the content of the agreement more than necessary.

Computer tools for monitoring collective agreements are therefore very unlikely in Sweden in a foreseeable future. It would not be theoretically impossible for researchers to create such a tool, but in practice it would be very time-consuming considering the number of agreements; today there exist 74 nation-wide CAs which in turn are all complemented at and adapted to local/firm level, which makes a total overview quite difficult.

## **6. Final remarks**

### **The general discussion on flexicurity and its dissemination**

Apparently, a comprehensive debate in-depth on the incorporation of flexicurity is still pending in the countries analysed. What does seem evident, however, is that this has been a top-down approach, not connected to the theoretical approaches from social partners in the countries analysed.

In the general debate, trade unions in the countries analysed are quite reluctant to the flexicurity approach. The abovementioned top-down approach, *imposed by Brussels*,

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<sup>30</sup> European Economic and Social Committee. Brussels, 11 July 2007, EUOJ 2007/C 256/20, 27 October 2007, page 108 and following.

probably influences these perceptions. The positions<sup>31</sup> at national level vary from complete rejection or mistrust in writing to more moderate views which are generally expectant as regards the development of the approach in practice and the measures it entails<sup>32</sup>. As regards the influence of collective bargaining, it is apparently considered to be minimum or non-existing.

Although this is an approach approved by the Council, the dissemination of flexicurity in practice has been uneven until now. Some significant examples would be the measures adopted in certain countries over the last few years that could be included within flexicurity and which are mainly related to professional career management (employment security and labour transitions), labour market activation for certain collectives (older workers) and others. These measures were mostly taken prior to the start of recession, by means of legislation (usually agreed with social partners) in the context of national labour market policies. The influence of the European Employment Strategy and the Lisbon Strategy can be guessed in the background, mainly through the National Reform Plans, although this influence is difficult to confirm.

The effects of recession have meant that the flexicurity approach has been placed *de facto* in the answers provided at national level. The use of working time short-term arrangements combined with social protection measures (temporary unemployment benefits and other variations) has been the most widely used approach, both in practice at undertakings as an instrument for restructuring or reorganisation and as a legislative measure. Indeed, the recession has been a conditioning factor in the implementation of flexicurity: on the one hand, given the urgency related to problems in undertakings, it blocks any theoretical debate on alternatives; on the other, the tendency in practice is to agree to measures that fit perfectly with some of the flexicurity components. In fact, internal flexibility is being widely used in this period.

### **Flexicurity and Collective Agreements**

The countries chosen have solid systems of industrial relations that are a representation of the functioning of their collective bargaining. Although similarities may exist between certain systems (France and Spain), nuances and their application in practice make their differences stand out. All of them have social partners that play a role in collective bargaining, although the way in which they are organised, their interests and even their number vary considerably.

The relationship between collective bargaining and flexicurity is strongly influenced by the institutional framework and nature of the system of industrial relations in each country. Within this system, by the structure and articulation between the different levels of negotiation which, in turn, is related to the role that the State plays through

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<sup>31</sup> Many of these positions in writing were provided as a response to the Commission's Green Paper

<sup>32</sup> However, social partners at European level – ETUC and BUSINESSEROPE - have been dealing with this issue in their joint Work Programmes 2004-2008 and 2008-2010, in which they furthermore agreed to monitor the development of flexicurity in Europe. Furthermore, they have developed ideas on the importance and the application of flexicurity in a 2007 joint analysis and declaration.

legislation and, on the other, how the productive fabric is configured and the dominating typology of undertaking in the country.

In all the countries analysed, flexicurity is not a topic that is explicitly shown or negotiated in the CA. Certainly, collective bargaining establishes a set of elements that are directly related with economic, social and even territorial aspects, in which it is difficult to isolate a specific topic or factor. The result of a CA is a *balance of forces*, in which specific measures can be detected, albeit within a general framework of autonomous regulation which, on the other hand, also includes external contents imposed by State legislation.

Decentralising trends in collective bargaining in most European countries, and in the countries analysed herein existed before the appearance of flexicurity. With a varying degree, the trend towards increasing flexibilisation towards the lower level of the undertaking from the sectoral level can be clearly observed, although the reasons behind this trend and its evolution may be different in each country. Individualisation of working conditions, including wages, is a clear example of this decentralising trend, although it does not necessarily follow that the process has become de-unionised; depending on the system of representation, it may be observed that this process is in many cases controlled by the trade unions.

As a reaction to this trend, or to face new forms of labour (as in the case of temporary agency work) or due to inherent national reasons, the introduction of flexicure contents in agreements can be detected. In general, bargaining to obtain balanced agreements that compensate flexibility and security can be said to be ever present in CA, even when the bargaining parties do not call it so. Collective bargaining is expressed in texts that include measures, some of which may fit in with the different components of flexicurity. In fact, this aspect is to a certain extent the cause for permanent internal tension in a CA, although as we have seen, it goes beyond this and includes other elements besides the mere exchange between flexibility and security.

Any collective bargaining could be said to contain elements of flexicurity, but also elements of a State legislative order and, obviously, autonomous elements that belong to a private contract between the parties. In this sense, it is difficult to isolate the flexicurity variable within the bargaining tradition in a specific country. Moreover, the inclusion of flexicure clauses can be influenced by factors external to the autonomy of the parties, as in the case of specific legislation on a certain topic. In other cases, the creation of external tools by the parties (e.g. training Funds) which support the implementation of flexicure measures in collective bargaining is clearer.

What does seem clear is that certain countries are testing their own approximation to flexicurity by means of legislation and/or the application of measures aimed at promoting certain aspects thereof. This is clear in the case of France or Belgium for instance. Every country places the accent on a particular aspect of the components or principles that make up flexicurity.

It also has to be highlighted that collective bargaining as an institution is *slow* in reflecting the introduction of innovations: in certain countries, agreements maintain their clauses for 3 or 4 years. Detecting innovative trends in the use of flexicurity as an approach or as specific measures, may not be an *automatic* exercise over time.

### **Analysis of flexicure contents in collective agreements**

All the experts consulted in the selected countries considered that the vast majority of the modalities of flexicurity that were sent to them could potentially be included or even exist at present in CA. Certainly, the recession has increased the number of agreements based on internal flexibility and, especially, as regards working time organisation and management (accounts), combined with job security. However, they also considered that some of them would be difficult to negotiate, namely, those forms of flexicurity that are associated to state intervention through legislation (setting minimums), or non-negotiable due to being general principles (non-discrimination) or due to the difficult positions of the parties as a result of the negotiation structure (wages).

For some years now, contents geared towards flexicurity principles have been negotiated in collective bargaining at undertakings, and even sectors, in the countries analysed. Analysing these contents in isolation could be risky as agreements are a “negotiation package” and all their contents work in balance, in such a way that the signing parties consider the agreement to be a positive exchange (win-win situation). Moreover, certain reasons specifically influence the incorporation of a given provision in an agreement at a given time (recession or reorganisation within the company, the enforcement of a new law, etc.). Hence, the variety in the types of agreement determines the avoidance to extract definitive conclusions. Nonetheless, a description can be made of those elements found in relevant agreements in each country which can be classified as a component of flexicurity.

Certainly, the flexicure clauses that have been identified in the different CA do not intend to be representative of the state of collective bargaining, nor do they imply that other innovative or suitable clauses do not exist in other CA. However, the clauses presented are significant to the aims of our research, especially identified and analysed to this aim. We can state that “the clauses included exist, but not all clauses that exist have been included”.

Elements related to hiring and firing can be found unevenly amongst the countries. The reasons for this lay, on the one hand, in the strong influence of national legislation which prevents or limits the margins for bargaining on this topic; and, on the other, in the fact that this topic (external numerical flexibility) is a highly sensitive issue, especially amongst trade unions and workers’ representatives. However, certain illustrative trends can be found in representative collective agreements and sectors e.g. temporary agency work.

Measures affecting different forms of training –vocational training, lifelong learning– are present in CA, although with different levels of ambition. Thus, for instance, “time bank” measures or measures truly focused towards favouring lifelong learning are rarely present in Spain, although there is access to sectoral funds that are partially co-financed by the social partners. In France, on the other hand, the general transferability of training rights constitutes a significant advance towards the objective of flexicurity, pursuant to the national perspective thereof: moving from a job security approach towards building employment security based on the promotion of professional careers and favouring occupational transitions.

However, provisions regarding the bargaining of innovating forms of work organisation are difficult to find, without prejudice to certain forms existing in different national approaches in CA: forms of team work, influence of workers' representatives in the improvement of production models, etc.

The appearance of pay schemes linked to results or other variables is also a controversial issue as it is considered to be at the heart of collective bargaining. These formulae have existed for some time in all countries and systems –the relationship of wage increases with productivity is commonplace and the trend seems to be increasing-although it depends on the predominant level of the agreement (national, sectoral or company).

Measures regarding working time aimed to conciliate professional and personal life, in particular –though perhaps with a reductionist approach- to childcare, are starting to be included in collective bargaining, albeit quite slowly. Technology or the need to save mobility costs, as well as the demands from certain workers, constitute a factor for advancing in this type of agreements. Sectors can be a good vehicle to adopt general guidelines or to transpose the rights established in legislation, although the undertaking or workplace seems the ideal place for specific implementation thereof.

Finally, measures concerning equal opportunities have been developed to a great extent in collective bargaining in countries such as France and Spain as a result of legislative influence (which usually establishes the duty to negotiate agreements in the corresponding collective bargaining level), although minimums are covered in all countries through legislation, usually originated in the Union. According to our experts, a different issue altogether would be if there is still work to be done in complying effectively with these provisions in practice.

### **Innovations found in collective agreements**

Prior to recession, the bargaining parties of CA in some sectors had found formulae that allowed the incorporation of flexicurity elements. The requirement for undertakings to become more competitive, a greater presence of the services sector in the economy and labour market evolution towards the segmentation in employment and workers are pressure factors that have been answered in collective bargaining.

Overall, the agreements reached in all the countries analysed in the temporary agency work sector, a sector which is typically the object of flexibility, can be mentioned as containing innovative measures within the principle of flexicurity. In several countries, collective bargaining has found solutions that have combined the flexibility needs of agencies –and user undertakings- with requirements for greater security (numerical flexibility).

### **System to record and disseminate CA**

There are differences with regard to the systems through which CA are recorded and analysed from country to country. The southern countries, France, Spain e Italy, have compulsory recording systems at national level, as does Belgium, although in the case of the latter, this only applies to national agreements. In the former three countries, there are databases available with the CA at sectoral level, together with other prestigious data bases of a regional nature or run by private institutions. Different studies are carried out with regard to this information, both at official level and by academic teams. These studies are published regularly.

However, in Sweden, agreements reached are considered to be private contracts, and hence no recording system or data base exists with this information: agreements are accessible in hard copies, as they are made available by the parties to their members.

### **Transfer of a computer tool to measure and monitor flexicurity in CA**

Due to the national idiosyncrasies of the system of collective bargaining in each country, the experts consulted state their scepticism with regard to the ability to transfer this type of tool. Flexicurity is a foreign approach that is not perceived as part of the *acquis* of collective agreements in each country. As mentioned above, the availability of data bases, except in Sweden, which are accessed regularly by the social partners, researchers and other interested parties, contributes to reinforcing the notion that establishing or using another different computer tool data base to measure and monitor flexicurity in CA would be unsuitable. However, given the initial stage of the proposal, these experts wouldn't reject analysing a more perfected development of this tool that presented its advantages. Rejection to this idea was probably greater in Sweden, where the representatives of the social partners were consulted directly, due to the strong sense of autonomy and ownership of the signing parties of the agreements reached.

## Annex I

### Overview of flexicurity themes, goals, and possible CA-provisions

Flexicurity-themes/ Forms or modalities of flexibility and security	Goals of flexicurity
<p>8. Transition security: timely supporting of transitions between jobs, aimed at preventing unemployment – by offering a search period, temporary wage supplements, reimbursement of travel and moving expenses, timely job search possibilities during working time, help in setting up own business.</p> <p>9. Preference of transition security over traditional financial compensation in the form of severance payment.</p> <p>10. Hiring and firing regulations.</p> <p>11. Provisions of employment security.</p>	<p>1. Creating more and better jobs</p>
<p>12. Improvement of equal access to employment for all.</p> <p>13. Equal treatment of atypical workers, no exemptions from provisions and enabling them to progress within a firm.</p> <p>14. Facilitation of life long learning, anticipation of skills needed in the future, possibly related to the introduction of new technologies.</p> <p>15. Increase of employability, where needed to increase availability for another position, sector or profession. More attention for more general skills.</p> <p>16. Creation of education possibilities, not merely company or sector specific training.</p> <p>17. Creation of individual budgets and trajectories for education and training.</p> <p>18. Development and implementation of national/standardised qualification- and validation systems, also to identify skills previously acquired (accreditation of prior learning).</p>	<p>2. Preventing segmented labour market and informal employment</p> <p>3. Development of human capital</p>



19. Conclusion of agreements on training and education at the start of an employment contract.	
20. Link between wage development and the economic cycle/productivity growth.	4. Increase of cost-effectiveness
21. Variable pay schemes based on fair and transparent monitor- and appraisal systems.	5. Strengthening competitiveness
22. Employment-enhancing remuneration schemes (making use of lowest wage scales).	6. Increase of productivity
23. Correction of unequal remuneration of men and women.	
24. Availability of various leave schemes, such as types of parental leave.	7. Active promotion of gender equality
25. Working time arrangements that facilitate the combination of work and care while stimulating labour market participation and being responsive to market demand and the position of the firm.	8. Facilitating life courses and personal choices of people, including combination and balance between work and care
26. Promotion of good or “decent work”, incl. health and safety and representation security.	
27. Development of innovative forms of work/social innovation.	9. Development of business potential
28. Fostering functional flexibility, i.e. the capacity of workers to perform different tasks or jobs within a firm.	
29. Appropriate management of labour migration.	10 Improved matches in the labour market

