

Changes in Swedish health insurance system and labour law due to the influence of EU

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1. INTRODUCTION

Due to the influence of the EU Lisbon strategy and now the Europe 2020 strategy, great changes have taken place in the Swedish health insurance system which also affect job security, albeit indirectly. Sweden achieved the objectives of the Lisbon strategy. In one area though, sickness absence and early retirement, Sweden had a significantly higher absence rate than most EU countries (11.2% of the population) and was similar in this respect to the Netherlands and Norway. EU flexicurity strategies for the achievement of EU employment targets have since been incorporated into social insurance law and indirectly through labour law. After these changes the sickness rate fell sharply, from the highest in Europe down to an average European level. The changes, however, have been very politically controversial and the issue has dominated the last two general elections in Sweden (2006 and 2010).

The EU flexicurity strategy is clearly noticeable in cases such as employees who were formerly on sick leave from their normal jobs without any specified time limit, which often meant time off sick until early retirement. These days there is a requirement that employees use any work capacity they may have for earning their livelihoods by trying to change jobs at their employers (internal flexicurity) and if there is no suitable work there, at another employer (external flexicurity). During the transition period to a new employer no compensation is paid from health insurance; instead compensation is paid from the unemployment insurance scheme to show that the employee can actually work, but not with the former employer.

Swedish labour law is characterized by strong employment protection legislation in the case of individual redundancy, such as for illness (unlike the case of collective redundancy). Despite this protection, the process of increasing flexibility within health insurance has had far-reaching consequences on job security. From the previous situation, where virtually no sick employees were made redundant in Sweden, this has become increasingly common. The dynamic approach of EU flexicurity strategies from the Europe 2020 strategy has also crept into the seemingly immutable legal regulations because politicians have not hesitated to implement changes that have indirectly made job security worse for sick employees.

Because of the change that has been driven through at workplaces and under the influence of the European strategy objectives, labour market partners have started to renegotiate the old security and development agreements in a direction that is consistent with the European objectives. Previously, employer's activities on the issues of rehabilitation and training schemes under legislation and agreements were totally focused the employee's workplace and what was to the benefit of the employer. This approach is not consistent with the basic ideas in the EU flexicurity strategy, where employees' employability is in focus. Labour market parties, unlike legislating politicians, have cautiously started to take steps so that their efforts will also facilitate the transition towards working for other employers.

These amendments have introduced a dynamic element into Swedish health insurance and labour law that is clearly inspired by EU flexicurity strategies. Employees are encouraged to look for a new job and change their situation early in the process of registering as sick. This is the beginning of a shift in values in the direction of Europeanisation, both in Swedish collective agreements and from the fundamental labour law viewpoint.

2. FLEXICURITY AND SICK EMPLOYEES

The goal for EU countries' employment, according to *Europe 2020 strategy*¹, is that the employment rate will be 75 % for men and women in the age group 15-64 years. This will take place through increased participation in the labour force by young people, older employees, employees with low qualifications and better integration of legal migrants. The Europe 2020 strategy followed the earlier Lisbon Strategy², which stated, among other things, that employment should be 70% by 2010. In a review of the Lisbon Strategy³ the employment rate in Sweden in the years 2000-2009 for the age group 15-64 years was stated as 72-74 %. The only employment rates in the EU that were higher than this, over 75 %, were in Holland and Denmark, and average employment in the European Union (EU 27) was around 65 %.

In order to achieve the objectives of the Lisbon strategy, the Commission implemented a strategy for flexibility and security, *flexicurity*. The Commission developed the principles of flexicurity in the Communication COM (2007) 359 final, which is based on a report from the European Expert Group on Flexicurity (led by Professor Wilthagen).⁴

Flexicurity can be described as “a policy strategy to enhance, at the same time and in a deliberate way, the flexibility of the labour market, work organisations and employment relations on the one hand, and, security – employment security and social security – on the other...The key principles that underpin a flexicurity strategy are that flexibility and security should not be seen as opposites, but can be made mutually supportive.”⁵ For a strategy to be called flexicurity, flexibility as well as security must be developed at the same time and not separately.⁶

The Commission and the Member States have translated the fundamental concepts of flexicurity into four components (pathways) for its implementation.⁷ Employment contracts shall be made flexible with the help of labour law, collective agreements and labour organisations. Strategies for lifelong learning shall increase adaptability to obtain work. Labour market policies shall be effective and quickly facilitate the transition between jobs. Social security systems shall provide income support, promote employment and facilitate mobility in the labour market.

According to the Commission, lifelong learning is a prerequisite for companies to carry out rapid changes at the same time as the employability of their staff is secured in the long term. A strategy for lifelong learning requires that governments, labour market partners, companies and individual employees are actively involved in the process. The Commission stresses the importance of social security systems compensating for loss of income between two jobs or, as in this paper, later in the period between sickness and work. It is also important that the systems stimulate active seeking of new work. The Commission stresses the importance of labour market partners' participation if flexicurity is to provide benefits for all. Labour market partners have the best opportunities for meeting both employers' and employees' needs and finding synergies. The Commission believes that a comprehensive strategy for flexicurity, instead of individual measures, is the best way to involve labour market partners in a discussion. Responsibility for concrete political initiatives rests with the government as well as the parties involved. The Commission also says that flexicurity may vary in different countries and that the flexicurity model must be adapted to specific situations that occur in the labour markets and labour relations in each country.⁸

Both internal flexicurity (within the company) as well as external flexicurity (from one company to another) must be promoted. Within a company, internal flexibility measures such as short-time weeks, as well as functional flexibility such as transfer and work rotation, may be required.⁹ The Commission emphasises the importance of creating a balance between internal and external flexicurity for the labour

¹ COM (2010) 2020 final.

² On 23-24 March 2000, the Council of Europe agreed on the so-called Lisbon strategy at the meeting in Lisbon. For the conclusions of the Presidency of the European Council 23 - 24 March 2000 in Lisbon, see also COM (2005) 330 final.

³ SEC (2010) 114 final and COM (2007) 359 final.

⁴ Report by the European Expert Group on Flexicurity, June 2007.

⁵ Report, June 2007, s. 11, see also Wilthagen and Tros, 2004, Transfer 10(2), s. 166-186 and Fahlbeck, 1998.

⁶ See Wilthagen and Tros, 2004, p. 170.

⁷ COM (2007) 359 final, p 5.

⁸ COM (2007) 359 final, pp 6-9.

⁹ See Wilthagen and Tros, 2004 and Pacelli et al 2008 p. 6 ff

market to function more efficiently at the same time as employees are protected.¹⁰ The Commission says that internal flexicurity is particularly important for those countries that have a low turnover in the labour market (such as Sweden; author's note). Employees are often tightly bound to the company and the labour market is not dynamic. As company restructuring and outsourcing become more common, however, these structures become weaker. In Sweden, mobility between companies has increased even more since the 1990s through the hiring of labour from recruiting agencies. A contracting company carries out work for another company, while a recruiting agency hires out its employees to another company where they perform work under the management of that company. The Commission believes that both citizens and society would benefit from a greater mobility between companies¹¹. This goal will clearly be in conflict with traditional labour law in Sweden, where the general rule is fixed, permanent employment.

After the economic crisis in the late 2000s, the Commission emphasised that internal flexibility is particularly important in economic downturns.¹² This refers to adaptation by labour organisations as well as working hours. The Commission also emphasises the importance of targeted actions for particularly vulnerable employees such as the elderly and disabled (here we may also include those who have a reduced work capacity due to illness). The dialogue between labour market parties on how lifelong learning should be achieved in practice must be encouraged because it is particularly important for the efficient distribution of costs, the training offered at workplaces and cooperation between industry and the public sector.

In conjunction with the economic crisis in 2008, parties in the manufacturing industries reached agreements that were unique for Sweden in order to avoid redundancies¹³, which is an example of internal flexibility. Working hours, and thus salaries, were reduced by up to 20 %. The hours when work was not being carried out could be used for internal training to improve the company's competitiveness and the employees' skills. Sweden has not really had a redundancy institute in which the government has participated since the mid-1990s. In the majority of European countries there is some form of government aid during economic crises.¹⁴ In 2012 the labour market parties¹⁵ submitted a proposal for how short-time working could be introduced in Sweden.¹⁶ An important part of the proposal was training, both general and specialised, which would be carried out during short-time work and which, according to the proposal, the government should compensate companies for. A draft law on short-time work was submitted by the government at the end of 2012.¹⁷ The two proposals are generally similar, but differ in terms of who will pay for any training carried out. The government was not prepared to introduce compulsory training or state subsidies for this. It said that skills levels in Sweden are relatively high, education is free, and that employers have a certain legal responsibility for skills development.¹⁸

To help an employee with reduced capacity to return to work, different types of measures may be needed. These may be seen in the light of the flexicurity concept. Measures are needed to promote functional flexibility such as transfer or adaptation of work. If it is not possible to arrange suitable work within the company, measures may be needed to stimulate external flexicurity and facilitate the transition to another job. During this transition period, it is important that security in the form of different measures and income support is made available through health insurance and unemployment insurance, for example.

3. HEALTH INSURANCE TOWARDS FLEXICURITY

The health insurance system in Sweden has undergone major changes during the last decade. From being a static system where certain employees ended up on passive long-term sick leave and early retirement, it is now a system that drives changes to the individual's situation.

¹⁰ COM (2010) 682 final, 2011/C 318/24, p. 1.3.

¹¹ COM (2007) 359 final, p. 15.

¹² COM (2010) 682 final, pp. 5-7.

¹³ Framework agreement on temporary layoff and training; the IF Metall union makes collective agreements with employees. For salaried officials, a similar agreement on salaries could be made within the framework of existing collective agreements. See also the Layoff pay Agreement.

¹⁴ See Government White Paper, Ds. 2012:59 Chapter 3 p. 63 ff

¹⁵ Mines' Employers' Association, GS, IF Metall, the Industrial and Chemical Group, the Forestry Industries Federation, the Steel and Metal Employers' Association, SVEMEK, Swedish Engineers, Technology Employers and Unionen

¹⁶ Short-time working - a joint party proposal for Sweden.

¹⁷ Government White Paper, Ds. 2012:59.

¹⁸ Government White Paper, Ds. 2012:59 p. 218 ff

Despite Sweden achieving the objectives of the Lisbon strategy with an employment rate higher than 70 %¹⁹, Sweden wrestled with structural problems during this period (2000-2009) in the form of high sickness rates and many early retirements. After the economic crisis in Sweden at the beginning of the 1990s, the number of people on long-term sick leave started to increase. It accelerated particularly between 1997 and 2002.²⁰ After 2002, however, the number of people on early retirement pensions increased, since those on long-term sick leave were transferred to this category of insurance. In 2005 an average of about 206,000 people were unemployed and received benefits from unemployment insurance and about 89,000 were in some form of labour market scheme. In the context of health insurance, about 477,000 people were in early retirement and approximately 228,000 received sickness benefit or rehabilitation benefit. Before Sweden made extensive changes to the health insurance system, the number of days with benefits paid for sickness or early retirement reached a maximum (2005) of 11.2 % of the population between 16 and 64.²¹ Many of the people on early retirement pensions were relatively young, under 40. ²² On top of this, approximately 6% were unemployed. This put a strain on public finances. In 2004 the costs for sickness benefits and early retirement pensions were estimated at SEK 92,500 billion (for 2010, after the reforms were made, the costs were estimated at SEK 79,700 billion). ²³ There was a clear gender difference too, since women in 2000 had 70% more days of sickness than men. Different studies have been carried out in this area. ²⁴

Director General Anna Hedberg, social democratic deputy Minister for Social Security and Director General of the National Insurance Board, was appointed by the government to make an evaluation of the health insurance system. Her criticism of health insurance was extensive.²⁵ On 1 July 2008, changes were carried out to rectify some of the items under criticism.²⁶

Anna Hedberg's investigation takes up the problems that existed in the health care insurance system.²⁷ The Swedish health care insurance worked together with unemployment insurance and early pensions, which meant that health care insurance was not a stable insurance in the sense that sickness figures were relatively constant over time. On the contrary, Swedish health care insurance was characterised by large fluctuations. Another phenomenon was regional differences. The investigators note that health insurance had been allowed to expand and cover significantly more problems than it had been intended for, e.g. insurance for the sick. During the 1970s a shift in the National Insurance Board's assessment meant that people could receive sickness benefit if it was judged that they had difficulties in finding a new job. A change in the law in the mid-1990s, however, clearly stated that in the assessment of whether someone had an illness that decreased the capacity to work, the assessor should ignore labour market, financial, social or other conditions.²⁸ The shift from health care insurance to unemployment insurance was small. Unemployment insurance pays up to 25% less compensation, so individuals naturally prefer to stay with health insurance rather than go over to unemployment insurance. It should be noted that while health care insurance is compulsory, unemployment insurance is voluntary with some degree of self-financing, even though the larger part is financed through government resources. A number of employees have chosen to opt out of unemployment insurance and cannot fall back on this if sickness benefit is withdrawn. There was a shift from health insurance to early retirement, however. Approximately half of the sickness periods that were more than one year ended in early retirement.²⁹

In very simplified terms, we can say that the government changed the conditions of health insurance. The basic premise now is that those who have working capacity must use it to provide for themselves, and they will not be eligible for sickness benefit. If a person is not able to work for their current employer due to sickness, they will receive unemployment benefit instead of sickness benefit if the person cannot find a

¹⁹ Brussels, 2.2.2010, SEC (2010) 114 final.

²⁰ Social insurance in numbers 2012, p. 40.

²¹ Government White Paper, SOU 2006:107, p. 71 ff and Government White Paper, SOU 2006:86 p. 57 ff.

²² Government White Paper, SOU 2006:86 p. 57 ff.

²³ The National Insurance Board's budget document for 2007-2009 and 2011-2013.

²⁴ See Sandmark and Renstig, 2005, among others.

²⁵ Government White Paper, SOU 2006:86.

²⁶ National Insurance Act No 480.

²⁷ Government White Paper, SOU 2006:86 p. 51 ff

²⁸ SFS (Swedish Code of Statutes) 1995:508.

²⁹ Government White Paper, SOU 2006:107.

new job. The focus had previously been on whether a person was able to carry out *his* work for *his* employer or not. In this way, health insurance included “protection of a position” since no clear requirements were made that the sick person should change his duties at work to others which he could manage. The concept of *incapacity for work* is key here. Before the reform there was rarely any search made of the whole labour market. This means, in practice, that there were no requirements on the individual to change occupation, move or take a lower paid job.³⁰ The strong connection with the original place of work and the original job led to long-term sickness leave, which eventually merged into early retirement. The reform means that instead of connecting sickness to the current job, a study is made of work capacity in relation to other possible jobs on the labour market. The present focus lies on whether a person is able to carry out any work at all. Examination of the labour market in general has also been extended to include all possible jobs. Changes were made to facilitate the transition to unemployment insurance for those who could not perform their work due to illness. The 45 day period without compensation for those who choose to resign from work was removed for those who were sick.³¹ These changes are also well in line with the idea of flexicurity and the notion that social security systems should provide income support and facilitate mobility on the labour market. The previously granted early retirement was reviewed and in the future new early retirement will only be granted to those judged to be too sick to ever return to the labour market.

The health insurance reform means that Sweden has moved from a system in which employees who were no longer able to continue working in their jobs became registered as long-term sick and then went into early retirement, to a system where employees must use any remaining work capacity to support themselves. After extensive political discussions this was changed in the law (SFS, Swedish Code of Statutes, 2012:256) to an attempt towards a job *that normally occurs on the labour market* instead of a job *on the usual labour market*, as it was from the beginning in 2008. A job *that normally occurs on the labour market* is a somewhat narrower concept, so the reform eased up a little here for political reasons, and the change may mean that somewhat fewer people have their sickness benefit withdrawn in practice. A point in time has been established (at the latest on day 180 of sickness) by which the Social Insurance Agency must have examined whether the employee is able to carry out any other work. An upper limit of 914 days’ payment of sickness benefit was introduced. Up to this time, Sweden had been relatively alone in not having this limit.³²

After the changes were made to the regulations in 2008, studies have been made which show that the number of employees on sick leave generally dropped from 13.4 % on 30 September 2007 to 8.8 % on 30 September 2009. This was mainly because the length of sickness leave decreased. Sickness cases were concluded by a return to work in 84.4 % of cases in 2007 and in 88.9 % of cases in 2009. In 2007 sickness leave was concluded in 1.7 % of cases by a transition to unemployment, compared with 2.2 % of cases in 2009. A transition to early retirement (activity/sickness benefit) took place in 0.4 % of cases in 2007 compared with 0.1 % of cases in 2009 because the rules for early retirement (activity benefit) only allow early retirement for those who are not expected to ever be able to go back to work.³³ Prior to the reform, sickness benefits had been cancelled in 0.5 - 1 % of cases, as compared with 2 - 2.5% of cases after the reform. The purpose of the new regulations is that employees shall have a period of changeover, rather than maintaining *conditions* as they were when the employee became sick.³⁴

The figure below, for example, shows the development of sickness absence in per cent during the years 1987-2011 among employees in the age group 20-64 in eight European countries, as well as sickness absence on average for these countries. Sickness absence in Sweden, the Netherlands and Norway show the greatest variation during these years. The Netherlands and Sweden implemented changes to the health insurance system, which Norway has not done. Norway still has a sickness absence rate that is clearly above the other eight countries.

³⁰ Government White Paper, SOU 2009:89 p. 77. For many years unemployment insurance on the other hand has required that unemployed persons must take work when it is offered.

³¹ See SFS (Swedish Code of Statutes) 2008:937 and the changes that were made in the Ordinance (1997:835) on unemployment insurance

³² SFS (Swedish Code of Statutes) 2008:480.

³³ See Hägglund and Skogman Thoursie; IFAU report 2010:17, p. 32 ff

³⁴ Interim report - Follow-up of the rehabilitation chain etc, Social Insurance Office, DNR 050194-2010, p. 13.

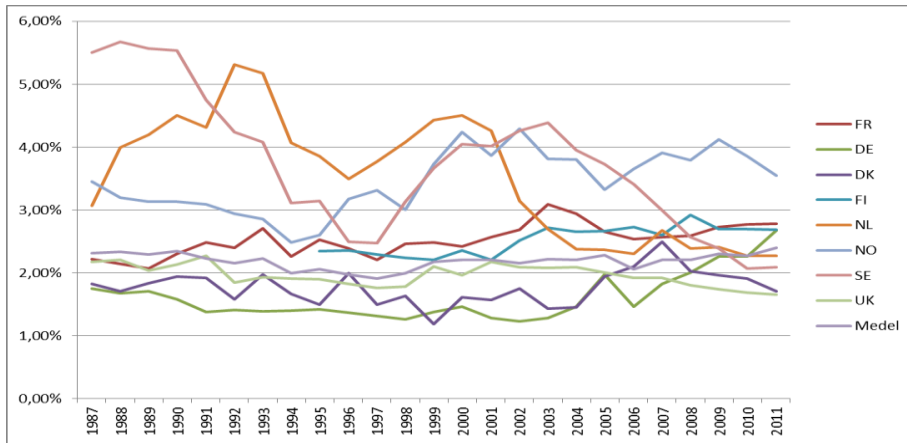


Figure 1

Many people believed that other benefits, such as unemployment benefit, would increase when health insurance was reduced. This has not been the case, as the chart below shows. Here we can see the development of the number of whole year equivalents in the age group 20-64 that are provided with social benefits and allowances* in 1990-2011;³⁵

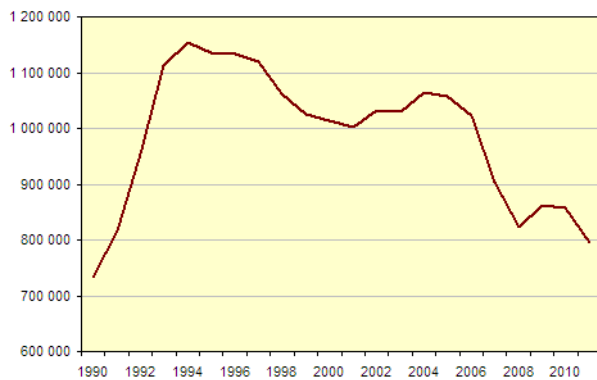


Figure 2

*) sickness allowance, sickness activity benefit, unemployment, labour market policies and financial assistance.

The proportion of the population in the age group 20-64 supported through social benefits in 1990 was 14.8 %, whereas in 1994 it was 22.7 % and in 2011 it was 14.4 %. In total the number in 2011 decreased by 7.3 %. The category of unemployed decreased most by 24.6 % and early retirement (sickness and activity benefits) decreased by 10.9 % while sickness benefit increased by 13.8 % (after having fallen every year since 2002).³⁶

The reason that the costs for sickness allowance, sickness and activity benefits decreased was due to changes in the rules and interpretation of the rules, not because people became "healthier" and had a greater work capacity than previously. The Swedish example clearly shows that the assessment of whether someone is "healthy and capable of working" is governed by how the rules and regulations are formulated. In one stroke, many people became "healthy", i.e. were no longer eligible for sickness benefit, instead of "sick" because they were judged to be able to perform different work than they were originally employed to do. Such rapid changes meant that the population's trust in the social insurance system took a slight knock.

³⁵ The graph is taken from Statistics Sweden's press release No. 2012:815 from 15 August 2012.

³⁶ Statistics Sweden's press release No. 2012:815 from 15 August 2012.

Health care insurance has changed from being clearly tied to the original workplace and whether or not any remaining work capacity could be used there, to employees being more or less forced to use their residual work capacity in the search for new jobs. The ideas behind the health insurance reform are now more consistent with the basic concepts of flexicurity than earlier practice, since they stimulate external flexicurity (from one company to another) but still retain income security³⁷ (some income protection). The unemployment insurance scheme provides compensation if sickness benefit is withdrawn. Previously, the ethos of the health insurance system and Swedish labour law corresponded with each other in the central position of the employee's original job. The discrepancy between civil law (labour law) and administrative law (health insurance rules) has arisen since labour law has only undergone indirect changes and ties to the original workplace are still strong.

4. LABOUR LAW AND FLEXICURITY

There is strong job security in Sweden and employment is always presumed to be permanent unless otherwise indicated.³⁸ A permanent post can be terminated by an employer either for reasons related to the employee personally, i.e. subjective individual reasons (*personal reasons* such as wilful misconduct, but also lack of work capacity such as illness) or other reasons.³⁹ Other reasons are summarised in the term *shortage of work*.⁴⁰

The justification for giving notice due to *personal reasons* is often difficult for an employer to meet. Extensive documentation of wilful misconduct is required before it is possible to give notice. If an employee performs poorly due to ignorance or lack of skills, her performance must be substantially less than reasonable for there to be a valid basis for giving notice due to personal reasons.⁴¹ Should the cause of the employee's poor performance be illness, on the other hand, job security is reinforced. Illness, according to the main rule in LAS, is not a valid basis for giving notice,⁴² with the exception that if an employee is not able to perform work to any degree, this constitutes a reason for giving notice. The incapacity for work must also be long-term and the need for work adaptation must have been investigated i.e. tasks have been changed on the basis of the employee's capacity⁴³, rehabilitation measures have been taken⁴⁴ and an extensive investigation of other possible jobs must have been carried out to check whether there is any other suitable work with the same employer. The requirement that an employer must investigate whether other work is available may be difficult to comply with in practice, and the burden of proof lies with the employer to demonstrate that all opportunities have been investigated. If there is any doubt, no valid basis exists for giving notice. On the other hand, there are restrictions in the labour law regarding the obligation to find other work. There must be a vacant position (nobody else has been moved) and the employee must have adequate qualifications to manage the work.

The employer's responsibility for rehabilitation is part of the strong employment protection. The responsibility for rehabilitation continues throughout the period of employment and is not concluded until the employee has recovered. If, on the other hand, the employee is extremely ill or has a type of injury that means he is not expected to be able to continue work with the employer even after rehabilitation is concluded, the employer does not have any responsibility for rehabilitation. In such cases there is a valid reason for giving notice, despite the ongoing period of illness.⁴⁵ This approach also applies to education and training in the context of rehabilitation provided by the employer. For example, an employee who changed the area of his studies to one not requested by the employer was not considered to have contributed to his rehabilitation, which was aimed at the employee being given different work by the employer, and he was therefore dismissed.⁴⁶ The employer's responsibility for rehabilitation thus only includes measures that are linked to continued work with the employer. It may be a question of different

³⁷ Pacelli et al 2008 p. 6 ff

³⁸ Employment Protection Act (1982:80), known as LAS. There are also various forms of temporary employment, substitute jobs, etc. that are not covered by the strong job security but which are still exceptions from the general rule.

³⁹ Section 7 LAS.

⁴⁰ Semantically, the term is not completely correct because a number of situations that are not really related to shortage of work at an employer are included here, even though collective, objective redundancies are generally covered by the term.

⁴¹ See Labour Court ruling, AD 2007 No. 95, in which an engineer was given notice due to a serious lack of knowledge.

⁴² Government Bill to Parliament, prop. 1973:129 p. 126.

⁴³ Chapter 2 Section 1 and Chapter 3 Section 3 of the Work Environment Act (1977:1160).

⁴⁴ Chapter 30 of the Social Insurance Code (2010:110).

⁴⁵ See Labour Court ruling, AD 2006 no. 57 and Labour Court ruling, AD 2007 no. 12.

⁴⁶ Labour Court ruling, AD 2006 no. 11, see also Labour Court ruling AD 1993 no. 42.

work with other tasks that the employee is capable of, but the employer has no obligation to carry out measures that are aimed at the employee starting work with another employer. This approach corresponds well with other Swedish labour legislation, in which the employer's responsibility does not extend beyond the current job, but less well with the basic idea of flexicurity, in which it is the employability of staff that is central. The strong job security in the case of illness is an important labour principle in Sweden. The requirement to find other work is an example of functional flexibility and stimulates internal flexicurity, while reinforced job security in the case of illness is an example of employment security.

Giving notice is only possible in extreme cases, where the employee cannot perform any work in principle. In spite of this, several cases from recent years show that illness can be a valid basis for giving notice. Under the old sickness allowance rules, in which an employee was on sick leave until he was healthy enough to carry out his work again or was granted early retirement, it was not possible to give notice to sick employees. Not until now, when sickness allowance is withdrawn if an employee cannot do any work, have matters been brought to a head. This happens if the employee would rather return to the workplace to try to work despite the reduced work capacity, rather than resigning and being moved to unemployment insurance while waiting for a new job. However, if the employee is so ill that he cannot actually work with either his original job or with any other job with the current employer, giving notice is the only way out, either by employer or by the employee.

The sickness allowance reform has eroded job security, despite the fact that labour legislation has not changed. This has taken place because it is now clearer when an employee is not able to perform any work for the employer, so the employer has a greater incentive to give notice. The employer, of course, does not know if there may be an opportunity for the employee to stay at work in the future if he becomes a little healthier, or if the employer has options to give the person in concern other work. Rather than risking further costs for rehabilitation or paying a salary to an under-performing employee, the employee is given notice as soon as there is a suitable occasion. An employee whose sickness benefit has been withdrawn may simply resign in order to be transferred to the unemployment insurance fund, which will be his income. A clear element of flexicurity strategy has crept in and affects the apparently strong job security in the event of sickness. There are now clear incentives for both the employee and employer to terminate the current job if the employee is not able to perform any work for the present employer, but could work for someone else.

5. COLLECTIVE AGREEMENTS AND FLEXICURITY

There is a long tradition on the Swedish labour market of parties making collective agreements, not only about salaries and other terms and conditions but also about the various forms of social protection and redundancy programme agreements to support employees who lose their jobs due to lack of work. A few redundancy programme agreements and social protection agreements cover large parts of the Swedish labour market both in the private sector⁴⁷, as well as the government⁴⁸ and municipal and county councils sector⁴⁹. There are smaller agreement areas as well as the major agreements.⁵⁰

Agreements typically contain a part that is intended to provide support for employees in the adaptation process to find a new job. They may involve career planning, help and advice to apply for new jobs, etc. According to the state Security Agreement (TA), training can be offered to give the employee sufficient qualifications for continued work. This is an example of how internal flexicurity has been facilitated by the parties' efforts, but it is unusual in agreements. The agreements also contain concrete financial commitments to give employees financial security for part of the transitional period. Employees may be given different forms of severance pay which usually covers 70 - 80 % of the previous salary, or at least part of this (the government unemployment insurance has a ceiling of approximately EUR 1,800). Entrance salaries may also be offered by a new employer (Security Agreement, TA) or the employee may participate in education or training during the period of notice without a reduction in salary. The agreements are complementary and safeguard financial security during a transition period.

⁴⁷ Redundancy programme agreement between SN and PTK, <http://www.trr.se/om.TRR/Detta-ar-TRR>, and the redundancy programme agreement between SN and LO, <http://www.tsl.se> and more in Zanderin, 2012, p. 52 ff

⁴⁸ Security agreement (TA), <https://www.tsn.se/>

⁴⁹ Redundancy programme agreement KOM-KL, <http://omstallningsfonden.se/om-oss//>

⁵⁰ Redundancy programme agreement between Aa, SvS and PTK, <http://www.trr.se/om-oss/vad-aer-trr/vilka-omfattas.aspx>.

Security/redundancy agreements concentrate on the situation that arises when an employee is going to leave the workplace and no measures were put in place before the situation arose. The agreements facilitate external flexicurity both through the measures themselves and through financial aid in the form of income security. However, there is no "preventive" work to facilitate a transition to other work with another employer during the period of employment. In that sense the security/redundancy agreements follow the key principle that is also found in legislation, i.e. the employer's measures during employment are limited to what is of advantage to the employer and are not intended to satisfy the employee's interest of employability in general. A similar approach is also found in the Development Agreement⁵¹ between SAF and PTK-LO, which deals with education and training, among other things. The Agreement is based on the fact that it is the employer who, with the support of the employer prerogative, decides what skills development an employee will be provided with. It does not contain any obligations for employers to provide employees with skills development in a way that creates employment security outside the company. Efforts are mainly linked to the company's needs and mainly benefit employability within the company.⁵²

The agreements differ in parts but their common ground is where an employee has been, or risks being, given notice due to lack of work. The agreements are not applicable to situations which concern dismissal for personal reasons, probably because these are usually due to wilful misconduct. The phenomenon of employees being given notice due to illness (the grounds for giving notice are personal reasons) is relatively new in Sweden and was not relevant when the original security/redundancy programme agreements were made. Thus, sick employees who are given notice fall outside the agreements. One reason may be that if the sickness is due to a poor work environment, other employers may not wish to give financial support since they feel that the cost should be borne by the employer who has the poor working environment.

Recent years' focus in Sweden on employees with reduced work capacity has affected labour market parties, however. In the private sector, in the context of the major security agreements (TRR for salaried officials and Startkraft for wage-earners) projects were carried out to examine the conditions required to strengthen organisations' assistance to employees who feel that they have reduced work capacity. This extra focus has given good results.⁵³ Negotiations have been in progress since autumn 2012 between the major players in the private sector (SN, PTK and LO) regarding the integration of sick employees in the agreements. Within a small part of the private sector a three-year-old redundancy programme agreement was made as a trial on 1 January 2012 in the Trygghetsrådet TRS area.⁵⁴ Persons who have been or who are likely to be given notice due to *ill-health* have the right to support in the form of advice and skills training. The redundancy programme agreement has also been extended to include preventive individual redundancy support in the form of life planning and career planning. The purpose of providing individual support to people who are not at risk of being given notice or are sick is to increase mobility on the labour market and reduce the risk of ill-health. The background of the trial agreement is a report that shows the dangers of individuals experiencing a feeling of being bound in place. A change of workplace and occupation can prevent sick leave in the long term, according to the report, by preventing a so-called double bind where the individual feels she is in the wrong occupation and in the wrong workplace.⁵⁵

The initiatives for negotiation taken by the parties are a way of introducing flexicurity strategies into the Swedish labour market. They also show that the parties can make agreements that do not follow the principle that employers are only interested in employees at their own workplace during the period of employment, but that they also consider the employability of their staff outside their own company, as well as people with reduced work capacity being included in agreements and becoming an issue for the parties, and not only for society. The labour law regulations, with their alternately strong and weak job security protection depending on how sick the employee is, options for re-location etc, mean that both employers and employees in the agreements have an interest in and a need for increased support for sick

⁵¹ The Development Agreement was originally made between SAF-LO-PTK (see negotiation minutes from 15 March 1982). The current agreement has applied since 1 January 1990, and covers the major part of the private sector.

⁵² See also Ulander-Wänman, IFAU Report 2010:19, p. 50 ff

⁵³ See Eide-Jensen, 2013.

⁵⁴ See negotiation minutes of 24 November 2011 between Aa, SVS and PTK.

⁵⁵ Aronsson and Moritz, 2009.

employees to find new jobs with other employers. The Trygghetsrådet TRS trial agreement is clearly ahead of labour legislation as regards realising the idea of flexicurity in the Swedish labour market.

6. CONCLUDING REMARKS

If Sweden is to achieve the goals of the Europe 2020 strategy, it is of great importance that sickness rates and the number of early retirements is held at the level of corresponding EU countries. There have been structural problems that differentiate Sweden from corresponding countries within the EU.

In the area of job security, labour law in Sweden has been stagnating for the last 40 years and no changes have been made (apart from a few minor adjustments to temporary employment). The changes that have been made in the area of labour law have all, in principle, had their origin in EU law and have mainly implemented various directives. In the job security area, it has been difficult to carry out any political changes aimed at employees who are ill seeking a new job that they are capable of doing, despite their illness. The symbolic value of job security is too large, and not even the conservative government that Sweden has had since 2006 has made any attempts in this area. Despite this situation, Swedish job security has been affected by the flexicurity strategy through changes to the social insurance system. This in turn has had an impact on labour market partners, who have started renegotiations so that their agreements, with all the measures to facilitate the transition to new employment, will also include sick employees, and it will also be possible to implement them before the employee has been given notice. The labour market parties still have a strong belief in the government taking overall responsibility for sick employees and for the skills development that is required for their employability to be maintained. The fact that employers take an interest in the employability of their staff outside their own company, and even while they are still employed, is a sign of new thinking that has not previously existed. The flexicurity strategy has thus had an effect on industrial relations in Sweden. While it is a generalisation, it may be said that the labour law regulations represent security and the sickness insurance regulations now represent flexibility.

The Open Method of Coordination in the implementation of the Lisbon strategy and Europe 2020 have not left any direct traces in legislation itself, but the reporting system has led to an increased awareness level, particularly in comparisons with other countries. Such comparisons with other European countries have become more self-evident, and Stefan Löfven, leader of the Swedish Social Democratic Party, opened the party congress on 3 April 2013 with a speech in which he promised that by 2020 Sweden would have the lowest unemployment rate in the EU. In the area of health insurance, Sweden's structural problems can be seen with the previously high and variable sickness rates being clearly visible, particularly in comparison with corresponding EU countries. It was also comparisons with sickness rates in corresponding EU countries which provided the impulse to changes in the health insurance system.

The clear goal of getting more people to work and implementing this idea in higher age groups obviously affects the Swedish labour market, the social insurance system, the parties and also labour law. The influence of the EU flexicurity strategy is clear.

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