

**Opinion of the European Economic and Social Committee on 'Flexicurity (Internal flexibility dimension — Collective bargaining and the role of social dialogue as instruments for regulating and reforming labour markets)'**

(2007/C 256/20)

The European Economic and Social Committee received a letter, dated 13 February 2007, from the Portuguese presidency requesting its opinion on abovementioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 18 June 2007. The rapporteur was **Mr Janson**.

At its 437th plenary session, held on 11 and 12 July 2007 (meeting of 11 July 2007), the European Economic and Social Committee adopted the following opinion by 163 votes to 2 with 5 abstentions.

## 1. Summary and conclusions

1.1 The EESC welcomes the Portuguese presidency's request to draw up an opinion on flexicurity, since the flexicurity debate has hitherto been limited predominantly to increasing external flexibility and ways of compensating for such an increase by strengthening labour market policies or social security provisions. Instead, the aim should be to focus on other dimensions to better create win-win situations.

1.2 The EESC would like to emphasise that the role of the social partners has to be strengthened. The social partners should be a protagonist in any debate on flexicurity and should have a privileged role in the European Commission's consultations. The Commission should thus have placed more emphasis on consulting, in particular, the European social partners on the European definition of the concept of flexicurity.

1.3 Strengthening industrial relations systems at European and national levels is essential for any discussion on flexicurity. A strong and vital social dialogue where the social partners actively participate and are able to negotiate, influence and take responsibility for the definition and components of flexicurity and evaluation of its outcomes is a key element.

1.4 The Commission and Member States should endeavour to link discussions which could lead to reforms based on the flexicurity concept with the strengthening and modernising of industrial relations at all levels. The EESC thus wants to see a stronger link between the flexicurity debate and the strengthening of social dialogue on all levels, and collective bargaining on appropriate levels, whilst respecting the diversity of different industrial relations systems in the Member States. The flexicurity concept should enhance both flexibility and security in a balanced way. The flexicurity concept does not mean unilateral and illegitimate reduction of workers' rights, an idea the EESC rejects.

1.5 The EESC recognises that, with the essential role of social partners in the progressive development of flexicurity policies at European level, this discussion can be seen as separate neither

from the content of the European social dialogue nor from the further development of the social dialogue itself.

1.6 The EESC wants to stress that the Commission and the Member States should give more attention to gender equality and intergenerational solidarity in the context of flexicurity. Women, older workers and young people are often at a disadvantage in the labour market in terms of flexibility and security, and upward convergence should be sought for these groups.

1.7 The EESC wants the Member States and the Commission to explore the enhancement of adaptability through internal flexibility and make this a viable and acceptable dimension of flexicurity. Internal flexibility can play a key role in advancing productivity, innovation and competitiveness, and can thus contribute to reaching the goals of the Lisbon strategy. It can also play a major part in allowing workers to better combine work with other activities and responsibilities and to improve the quality of their employment. A regulatory framework ensuring protection for employment and health care, and providing stability and security for workers is a prerequisite for all the above. Employment protection combined with effective re-employment services and active labour market policies are crucial for the adaptability and security of both firms and employees.

1.8 In the EESC's view, a balance between working time flexibility and worker protection should be pursued; this is best guaranteed through regulations established by collective bargaining, in line with national practises. Such bargaining on working time flexibility requires a solid context of rights, well-functioning social institutions and employment-friendly social security systems to back it up.

1.9 Functional flexibility is again a key issue for collective bargaining between social partners. Through such bargaining, the needs of businesses and workers can be balanced and fine-tuned and adequate compensation for increased skills can be defined.

1.10 Functional flexibility requires constant upgrading of the knowledge and capabilities of workers and a well-functioning education and training infrastructure to back this up. Whilst many commitments have in the past been made to lifelong learning, much remains to be achieved in practice.

## 2. Background

2.1 The Portuguese presidency has requested the EESC to draw up an exploratory opinion on flexicurity, including matters such as:

- 1) The dimension of internal flexibility
- 2) Collective bargaining and the role of social dialogue as instruments to regulate and reform labour markets.

2.2 Several of the guidelines in the employment policy guidelines (2005-2008) could form the basis for a discussion on flexicurity. The 2006 Spring European Council asked Member States to direct special attention to the key challenge of 'flexicurity' (balancing flexibility and security). Member States were invited to pursue, in accordance with their individual labour market situations, reforms in labour market and social policies under an integrated flexicurity approach.

2.3 At two social summits, in connection with the December 2006 and then March 2007 European summits, the issue of flexicurity was discussed.

2.4 The Commission established an expert working group to propose 'pathways of flexicurity', i.e. a certain set of dimensions of flexibility and security in working life. With this as a basis, the Commission published a communication on flexicurity in June 2007 including the presentation of a set of common principles. In December 2007 a set of common principles is to be included in the revised employment guidelines for 2008. The Green Paper on *Modernising labour law to meet the challenges of the 21st century* <sup>(1)</sup> also included the dimension of flexicurity, from the particular perspective of employment contracts, whose recommendations are set out elsewhere.

2.5 The EESC would also like to mention the important work done by the European Foundation for the Improvement of Living and Working conditions in this context, which set out important aspects of what flexicurity is.

## 3. Dimensions of flexicurity strategies

3.1 a) Flexicurity strategies refer to strategies that attempt to combine various types of labour market flexibility and security in a balanced way to strengthen the adaptability of workers and enterprises as well as providing them

with stability and protection against risks. As examples of the types of flexibility and security concerned one can mention:

### Examples of flexibility

External flexibility	numerical	Adjustment of employment volume by way of an exchange with the external labour market; involving lay-offs, temporary work, and fixed term contracts.
Internal flexibility	numerical	The temporal adjustment of the amount of work within the firm, involving practices as atypical working hours and time account schemes.
Internal flexibility	functional	Organising flexibility within the firm by means of training, multi-tasking and job-rotation, based on the ability of employees to perform various tasks and activities.
Financial flexibility		The variation in base and additional pay according to the performance of the individual or firm.

### Examples of security

Job security		Security deriving from employment protection legislation, etc., limiting the employer's ability to dismiss at will.
Employment security		Adequate employment opportunities through high levels of employability ensured by e.g. training and education.
Income security		The protection of adequate and stable levels of income.
Combination security		The security of a worker of being able to combine his or her job with other responsibilities or commitments than paid work.

- b) The legal security of the employment contract needs to be treated separately since such security means that the contract is enforceable against all and before the courts. It implies that the relationship of subordination is maintained, which has consequences, among other things, for the right to continuation and application of social protection for the worker.

<sup>(1)</sup> See COM(2006) 708 final. The Green Paper on 'Modernising labour law to meet the challenges of the 21st century' and EESC opinion of 30.5.2007 on 'Modernising labour law' SOC/246, (rapporteur: Mr Retureau) (OJ C 175, 27.7.2007).

3.2 Following the lead of the European Commission and inspired by certain aspects of the Danish example, the flexicurity debate at European level has been limited predominantly to the increase of external flexibility and ways of compensating for such an increase by strengthening labour market policies or social security provisions. The benefits and drawbacks of external flexibility is an issue where the opinions of trade unions and employers' organisations often diverge. Moreover, the OECD <sup>(2)</sup> recently stated that employment protection legislation has no significant impact on the total employment rate. Furthermore, the ILO has shown that there is a positive relationship between tenure and productivity (see Appendix).

3.3 This opinion aims to broaden the flexicurity debate in three ways. First, it seeks to emphasise that the role of the social partners in this debate, and in labour market reforms in general, has to be strengthened. Second, the EESC wants to stress that the flexicurity debate should give more attention to gender differences, and to the category of young people on the labour market. Gender equality has been largely absent from the flexicurity discussion. Despite the fact that more flexibility through part-time work are welcomed by the majority of women and men to ensure a better work-life balance, women are often at a disadvantage in the labour market in terms of flexibility and security, and upward convergence with men should be sought <sup>(3)</sup>. Third, the EESC regards it as important to achieve such broadening by exploring alternative ways to achieve adaptability, facilitate lifelong learning, improve productivity and foster innovation, vital dimensions of the Lisbon process. These are also issues that the EESC has touched upon in its opinion on the employment guidelines <sup>(4)</sup>. With this in mind, this opinion does not address the issue of external flexibility but focuses on the opportunities for enhancing adaptability through internal flexibility.

3.4 Flexicurity is of particular importance to small and medium-sized enterprises (SMEs) in the light of their significance in employment terms. In consequence Member State policies in relation to flexicurity, will have to contain provisions safeguarding the needs of SMEs and their employees.

3.5 The EESC stresses that the basis of all flexicurity models is a welfare state able to guarantee high levels of social protection, the assumption of responsibility by adequately funded public services, and a stable legal framework for collective bargaining and social dialogue. General welfare systems can improve mobility by ensuring that workers do not lose out when they are confronted with changes affecting their workplace. A stable framework for social dialogue and collective bargaining provides opportunities for strong social partners to agree on key issues relating to the labour market.

<sup>(2)</sup> OECD Employment Outlook 2006: Boosting Jobs and Incomes.

<sup>(3)</sup> Ongoing 'The role of the social partners in reconciling working, family and private life' SOC/271, (rapporteur: Mr Clever) and SOC/273 'Employability and entrepreneurship — role of civil society and local and regional bodies from a gender perspective' (rapporteur: Mr Pariza Castaños).

<sup>(4)</sup> See the EESC opinion of 31.5.2005 on 'The Employment Guidelines 2005-2008', rapporteur: Mr Malosse (OJ C 286, 17.11.2005).

#### 4. Flexicurity and the social partners

4.1 Flexicurity entails deciding the balance of rights and obligations between employers and workers. Social dialogue and collective bargaining are crucial instruments in the design and implementation of any type of labour market reform, including flexicurity. Thus, the European Economic and Social Committee stresses that the social partners are protagonists in any debate on flexicurity on all levels. The social partners should increasingly play a leading role in defining the balance between flexibility and security, and in doing so contribute to improving the rules of the labour market.

4.2 At European level, the EESC acknowledges that the Commission has informed the social partners about its plans relating to this debate. However, on this subject, the EESC considers that the Commission should have placed more emphasis on consulting, in particular, the European social partners on the European definition of the concept of flexicurity. Without the strong involvement and commitment of the social partners, it will be difficult to implement any kind of flexicurity strategy.

4.3 The European Economic and Social Committee pointed out in its opinion on the Danish flexicurity system <sup>(5)</sup> that 'The social partners have had a key role to play in the development of Danish-style flexicurity, both in decision-making and in implementation in areas such as training policy and labour-market structural reforms. [...] The social partners' role is the product of historical development... Greater involvement and input from the social partners can thus boost society's capacity to compete and adapt'.

4.4 In its opinion on the European Social Model <sup>(6)</sup> the EESC underlined that 'as regards the basic architecture of the European social model, too high a value cannot be placed on the fundamental role played by the social partners in the fields of economic and social policy. In this context, attention should be drawn to the particular importance of the regulatory role played by employers' and employees' associations in connection with collective agreements and wage agreements.'

4.5 The flexicurity agenda should not therefore be set in a top-down fashion, defined by the Commission and discussed by the governments of the Member States. The social partners must be able to negotiate, influence and take responsibility for the definition and components of flexicurity and evaluation of its outcomes. As flexicurity is so closely related to social dialogue and collective bargaining the emergence of the flexicurity debate will also highlight deficiencies existing in social dialogue and collective bargaining. These deficiencies should be addressed at the same time as the flexicurity agenda is being put forward. The EESC thus wants to see a stronger link between the flexicurity discussion and the strengthening of social

<sup>(5)</sup> See the EESC opinion of 17.5.2006 on 'Flexicurity: the case of Denmark', rapporteur: Ms Vium (OJ C 195, 18.8.2006).

<sup>(6)</sup> See the EESC opinion of 6.7.2006 on 'Social cohesion: fleshing out a European social model', rapporteur: Mr Ehnmark (OJ C 309, 16.12.2006).

dialogue at every level, and collective bargaining at appropriate levels while respecting the diversity of different industrial relations systems in the Member States.

4.6 Social dialogue at European level is unique in the world, as it gives the social partners the role of co-legislators in the social field. In recent years this has developed towards a more autonomous social dialogue. The social partners have the right to address issues of common concern for the better functioning of Europe's labour market. The EESC recognises that, with the essential role of social partners in the progressive development of flexicurity policies at European level, this discussion can be seen as separate neither from the content of European social dialogue nor from the further development of social dialogue itself. The social partners have in their multi-annual work programme agreed to explore aspects of flexicurity, but also to work towards the development of a common understanding on the European social dialogue instruments <sup>(7)</sup>. The EESC has developed its position on this its opinion 'Employability and entrepreneurship — role of civil society and local and regional bodies from a gender perspective' <sup>(8)</sup>.

4.7 In the Member States there are numerous examples, on all levels, of the crucial role of the social partners in enhancing both flexibility and security for employers and employees. Collective agreements in themselves are not only a security factor for employers and employees, but also allow for negotiated flexibility. Including elements of increased internal flexibility, career advancement and rights to lifelong learning is becoming more and more natural in an increasingly competitive environment. However, in Member States where social dialogue is inadequate due to fragile industrial relations systems, this also exposes workers too much to market forces in the labour market and often offers too little protection. Strengthening and modernising the industrial relations systems in the Member States should therefore go hand in hand with any discussions on flexicurity in the Member States.

4.8 The EESC would like, in this context, to highlight some examples of agreements between the social partners:

- Danish collective bargaining agreements which introduce mandatory notice periods to enable workers better to prepare for another job.
- In Sweden, collective agreements at industry level have set up 'career transition' funds financed by the business sector and jointly managed by the social partners. These funds provide workers who have received their notice with training, job-search assistance, or paid internships in other firms, even while they are still formally employed by the company that is laying them off.
- The Spanish tri-partite agreement on how to limit the use of fixed term work contracts. It is based on the principle that

too high a share of fixed term work is not in the common interest of labour and business.

- German collective agreements allowing for a limited degree of flexible organisation of both working time and work, drawn up and implemented with the participation of employee representatives in the business concerned.

The EESC also considers that the agreements concluded by the European social partners on, for example, fixed term work, parental leave, part time work and teleworking are part of a flexicurity concept contributing to security and flexibility for workers and employers.

4.9 In order for the social partners to be able to negotiate on core issues on the labour market with a view to achieving a socially acceptable balance between flexibility and security, there must exist a national legal framework encouraging the social partners to contribute and effectively negotiate on issues of flexicurity. Employment protection regulation and strong legal framework can give the social partners possibilities to negotiate agreements that promote workers' effort, co-operation and willingness to be trained, which is positive for aggregate employment and economic efficiency. The social partners' contribution guarantees that consideration is given both to business interests and to the interests of workers. In addition, employment protection combined with effective re-employment services and active labour market policies are crucial for the adaptability and security of both firms and employees.

4.10 The contribution of the social partners could be to aim at increasing protected mobility and making transitions pay. They can help in organising collective and negotiated control of labour market opportunities and rights. In the EESC's view, this would fight segmentation tendencies and improve integration.

## 5. Gender equality, intergenerational solidarity and flexicurity

5.1 Labour market flexibility and security affect men and women in different ways. Women often work in more precarious and insecure jobs characterised by excessive flexibility. Excessive flexibility, which could in some cases lead to the risk of precarious and insecure jobs, must be offset by an adequate form of security. Also, following the persistence of traditional gender roles, women have more care responsibilities where children and elderly people are concerned, and face greater difficulties where the combination of work and non-work activities are concerned. Moreover, despite anti-discrimination legislation, the gender pay gap persists and women often have fewer entitlements in terms of social security including pensions. Hence, women are more often affected by the negative sides of flexibility.

<sup>(7)</sup> The social partner multi-annual working programme for 2006-2008 included a joint analysis on the key challenges facing Europe's labour markets.

<sup>(8)</sup> SOC 273 'Employability and entrepreneurship — role of civil society and local and regional bodies from a gender perspective' (rapporteur: Mr Pariza Castaños).

5.2 The EESC stresses that the flexicurity debate must have a significant gender equality dimension, something which has been largely absent from the flexicurity discussion until now. It is important to improve the situation of women in the labour market by addressing both flexibility and security issues, including more secure jobs, their inclusion in social welfare systems and better support of institutions to combine work and non-work activities. Also, the division of care and household responsibilities between men and women should be part of the debate. The EESC, in its opinion on *The role of the social partners in reconciling working, family and private life* has further developed its position on these matters for the Portuguese presidency <sup>(9)</sup>.

5.3 As well as a gender dimension, flexicurity also has a generational dimension. The employment rate is lower among older workers compared to the workforce in general. Also, young people in many Member States face an uncertain labour market with high unemployment, fixed term contracts, insufficient social security coverage and work below their qualification level.

5.4 The EESC <sup>(10)</sup> has pointed out that jobs should match each individual's training and vocational experience, with no age discrimination, and that all the Member States must transpose and apply the directive on equal treatment in employment and occupation (2000/78/EC). The EESC also called for a policy supporting high-quality employment that would guide and train generations of citizens throughout their working lives. This entails a proactive role for the social partners and all the relevant economic and social players at local, national and European levels.

5.5 The European social partners have concluded a framework of action on gender equality which can be used in the flexicurity debate as well. In this action framework they have identified four priorities: addressing gender roles, promoting women in decision-making, supporting work-life balance and tackling the gender pay gap.

5.6 The considerations set out in the previous paragraphs, and the dialogue between the social partners, should give equal weight to the problem of workers with disabilities and young students.

## 6. Flexicurity and internal flexibility

6.1 Internal flexibility is an underdeveloped issue in the flexicurity debate. Internal flexibility concerns working time flexibility and functional flexibility and strengthens adaptability. This is typically an issue where social partners have ample experience in negotiating collective agreements with positive

<sup>(9)</sup> Ongoing 'The role of the social partners in reconciling working, family and private life', (rapporteur: Mr Clever).

<sup>(10)</sup> See EESC opinion of 14.3.2007 on 'The economic and budgetary impact of ageing populations' ECO/186, rapporteur: Ms Florio (OJ C 161, 13.7.2007).

outcomes. Internal flexibility can play a key role in advancing productivity, innovation and competitiveness and in this way it can contribute to reaching the goals of the Lisbon strategy. It can also play a major part in allowing workers to better combine work with other activities and responsibilities and to improve the quality of their employment. For both it can increase stability and predictability. However, internal flexibility can also become excessive, leading to bad working conditions or precarious employment, obstructing the balance between work and non-work activities, or even having harmful effects on the quality of goods and the provision of services to consumers. Therefore, such flexibility is only feasible when it is an outcome of collective bargaining and when it takes shape within the context of legal regulations that ensure work and health protection and that provide stability and security to workers. Pursuing negotiated internal flexibility within such a legal context constitutes a viable approach and aims to combine the improvement of competitiveness with the improvement of the quality of employment and working life.

### 6.2 Working time flexibility

6.2.1 Working time flexibility is about the distribution of normal weekly working time as established by collective agreements and/or by law over a longer time period. It can benefit companies through possibilities to adjust to demand fluctuations or personnel fluctuations and to fully utilise capital investments, by making use of overtime, the flexible scheduling of working hours over predefined time frames, shift work, etc. In this way working time flexibility can strengthen productivity and competitiveness.

6.2.2 Working time flexibility can also be about the distribution of working time over an individual's working life and about work-life balance (but not about the length of the standard working week). Such forms of working time flexibility can also benefit workers through possibilities to positively combine work and non-work activities and responsibilities, by making use of flexi-time arrangements, working time accounts, parental or educational leaves, options to switch between fulltime and part-time work, etc.

6.2.3 The EESC is keen to avoid working time flexibility being broadened only to the benefit of business interests, without employees' need for protection being taken into account at the same time <sup>(11)</sup>. Also, the organisation of working time should '... promote the interests of workers in having greater control over their time, enable them to safeguard their health and safety, which are vital, and, above all, promote a greater compatibility of work and the family' <sup>(12)</sup>.

<sup>(11)</sup> Cf. EESC opinion of 11.5.2005 on 'Amending Directive 2003/88/EC concerning certain aspects of the organisation of working time', point 3.4. Rapporteur: Ms Engelen-Kefer, (OJ C 267 of 27.10.2005).

<sup>(12)</sup> *Ibid*, point 3.6.

6.2.4 To this effect, in the EESC's view, a balance between working time flexibility and worker protection should be pursued, and this is best guaranteed through regulations established by collective bargaining. Indeed, in an earlier opinion, the EESC stated that 'the way working time rules are framed in collective agreements is of vital importance to the social partners, which have a wealth of expertise and experience in these matters' <sup>(13)</sup>.

6.2.5 Such bargaining on working time flexibility requires proper bargaining framework as well as a solid context of rights and social institutions to back it up. These include legal regulations that provide stability and protection to workers and social protection for part-time contracts, and that facilitate parental leave schemes and the development of child- and elderly care facilities. It is important that legislation should be flexible and neutral, thus enabling the partners to find appropriate solutions.

### 6.3 Functional flexibility

6.3.1 Functional flexibility refers to using workers' capacity to perform different tasks when needed, through job rotation, widening the scope of the job, and job enrichment. It can benefit companies by enabling them to adjust the type of activities workers perform to fluctuations in demand or staffing and to more productively utilise human resources and capital investments. Functional flexibility can also be of interest to workers because it may improve their opportunities for personal development, learning and employability, for job satisfaction, and for wage improvements.

6.3.2 Functional flexibility can be a key factor in pursuing the Lisbon goals of improving productivity, innovation and competitiveness. As shown by, for example, the Dublin foundation, functional flexibility, combined with training, has a positive effect on skills development and skills retention, again positively influencing productivity <sup>(14)</sup>.

6.3.3 However, functional flexibility requires secure conditions of employment, decent working conditions, empowerment,

and cooperative ways of working. As the EESC has argued in an earlier opinion, 'Secure jobs, salubrious working conditions and working arrangements that give workers more autonomy in their work are an important factor for increasing productivity and hence innovativeness' <sup>(15)</sup>. In the same opinion, it was argued that 'Cooperative methods of working, involving low-profile hierarchies and greater autonomy, such as group- and team-work, make it possible to exploit people's knowledge and abilities to the full, whilst, at the same time, taking account of the greater demands for flexibility in the economy. Good working conditions and forms of work organisation that are conducive to empowerment and participation are also a key prerequisite for improving labour productivity and strengthening businesses' innovativeness' <sup>(16)</sup>.

6.3.4 The Dublin Foundation has, however, called attention to the fact that functional flexibility may lead to more work pressure and stress. Hence it underlines that it is important '... to achieve a balance between job demands and job control in order to prevent burn-out among employees' <sup>(17)</sup>.

6.3.5 A basic element of functional flexibility strategies and internal flexibility strategies in general should be life-long learning. The importance of lifelong learning for improving workers' skills, career opportunities and productivity has been underlined in a number of recent EESC opinions <sup>(18)</sup>. Functional flexibility requires a constant upgrading of workers' knowledge and capabilities and a well-functioning education and training infrastructure to back this up. Whilst many commitments have in the past been made to lifelong learning, much remains to be achieved in practice.

6.3.6 Functional flexibility is again a key issue for collective bargaining between social partners. Through such bargaining, the needs of businesses and workers can be balanced and fine-tuned, and adequate compensation for increased skills can be defined.

Brussels, 11 July 2007.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

<sup>(13)</sup> EESC opinion of 1.7.2004 on the 'Revision of Directive 93/104/EC on the organisation of working time', point 2.2.6. Rapporteur: Mr Hahr (OJ C 302 of 7.12.2004).

<sup>(14)</sup> <http://eurofound.europa.eu/ewco/2004/02/NL0402NU03.htm>.

<sup>(15)</sup> EESC opinion of 13 September 2006 on 'Quality of working life, productivity and employment in the context of globalisation and demographic challenges', rapporteur: Ms Engelen-Kefer (OJ C 318, 23.12.2006, p. 1.3).

<sup>(16)</sup> *Idem*, point 1.4.

<sup>(17)</sup> <http://eurofound.europa.eu/ewco/2004/02/NL0402NU03.htm>.

<sup>(18)</sup> Opinions of the EESC on the 'Proposal for a Recommendation of the European Parliament and of the Council on key competences for life-long learning' rapporteur: Mária Herczog (OJ C 195, 18.8.2006), and on 'Training and Productivity (exploratory opinion)' rapporteur: Mr Koryfidis (OJ C 120 of 20.5.2005).