

Flexicurity and Decent Work in Europe: can they co-exist?*

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Abstract.

This contribution sets out to analyse the relationship between two notions of particular relevance in current debates on international and European labour law: decent work and flexicurity. The first has been the cornerstone of the International Labour Organization's programme for the last decade. The second is a political formula which has recently come to the forefront of European policy, based on a balance between flexibility and security in the labour market.

1. Decent work.

Promoting the concept of decent work has been the core of the International Labour Organization's policies since 1991 (⁶⁷⁸). As can be inferred from the report presented by the Director General Juan Somavia during the 87th International Labour Conference, the "primary goal" of the Organization is "to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity" (⁶⁷⁹).

In September 2000 the decision "to develop and implement strategies that give young people everywhere a real chance to find decent and productive work" is an integral part of the United Nations Millennium Declaration (⁶⁸⁰).

The concept of decent work, as illustrates the doctrine (⁶⁸¹), simultaneously reflects continuity with the past and innovation in the *modus operandi* of the ILO on themes regarding work. In short, the model of decent work expresses the *summa*, but also the starting point and essence of the mission which the ILO has taken upon itself since its inception in 1919 (⁶⁸²).

This model is universal, in the sense that it is applicable to all workers and all societies and that its objectives make up a common aspiration within diverse existing frameworks on a corporate, regional and national level.

Decent work summarises the aspirations of all workers in the so-called *four pillars*: a) *rights at work*; b) *employment*; c) *social protection*; d) *social dialogue* (⁶⁸³).

A) *Rights at work* make up the ethical and juridical basis of decent work. They lay down the foundations for the other pillars, and in this sense, precede them. They establish the effective relationship between work and the components of dignity, equality, freedom, fair pay, social security and the voice of the workers. They represent a part of the more general human rights agenda.

B) *Employment* is a vital element of decent work. It refers not only to Ford-style factory work with a fixed wage, but to every form of work, regardless of the place where it is carried out, the time-scale, or way in which it is produced (telework, self-employment, temporary work, part-time work, work performed by women and minors, etc.). Briefly, the pillar expresses the need for productive work which is freely chosen and fairly paid, for all. This translates into equal opportunities,

(⁶⁷⁸) See SOMAVIA 1999.

(⁶⁷⁹) *Ibidem*; COMMISSION 2007a.

(⁶⁸⁰) See UN 2000.

(⁶⁸¹) See GHAI 2006, p. 3.

(⁶⁸²) See ILO 2005a.

(⁶⁸³) See GHAI 2006, p. 7. For a summary of *labour standards* adopted by the ILO, see COMMISSION 2006b.

in the provision of concrete employment possibilities, in the guarantee of personal development and the fulfilment of workers' expectations.

C) *Social protection* expresses the need for protection of the worker from every form of accident and vulnerability which he/she could incur during his/her working life. The range of measures adopted in this sector is vast. On the one hand it deals with helping the worker and his/her family to cope with a series of situations which expose them to social risks (injury, maternity, unemployment, corporate crisis, redundancy, adversity, etc.). On the other, it deals with specifically protecting vulnerable subjects on the labour market, for example, women, minors, the elderly, disabled, etc. Social protection policies aim to reduce suffering, anxiety and insecurity at work, to encourage wellbeing and social inclusion to whom they are addressed.

D) *Social dialogue* gives the framework for workers' voices to be heard in corporate processes. By means of the right to information, consultation and participation via their own representatives, workers are involved in corporate decisions. Dialogue with other actors in production processes and with public authorities allows representatives to defend the interests of the workers, according to the model of participative democracy.

The principle of gender equality is transversal, covering all four pillars (*gender mainstreaming*).

The universal model for decent work sets out to improve living and working conditions of individuals worldwide, starting from the so-called hard core of social rights guaranteed by the ILO's *eight fundamental conventions* (⁶⁸⁴).

On an international level, the growing importance of the so-called *labour standards* identified by the ILO conventions is a consequence of the processes of globalisation (⁶⁸⁵). In brief, the evolution of forms of production and organisation of work causes rapid movements of capital and productive units which can determine a decline in standards of treatment for workers. The need to sustain a "fair globalisation", capable of avoiding forms of "social dumping" and able to focus on people, on respective rights, independence and cultural identity, dignity of work, while respecting completely gender equality, finds a driving force in the activities of the *World Commission on the Social Dimension of Globalisation*. In particular, the report presented by the Commission in February 2004 demonstrates the inevitable link between globalisation and decent work, making its priority national and international policies which aim to satisfy the desire of men and women for a decent job and in order to achieve a "fair globalisation" (⁶⁸⁶).

In September 2005 the UN reaffirmed the principles of the Millennium Declaration and consecrated the objective of a decent job "for all", including young people and women (⁶⁸⁷). Following

(⁶⁸⁴) See the ILO conventions: C29, concerning forced or compulsory labour (1930); C87, concerning freedom of association and protection of the right to organise (1948); C98, concerning the application of the principles of the right to organise and to bargain collectively (1949); C100, concerning equal remuneration for men and women workers for work of equal value (1951); C105, concerning the abolition of forced labour (1957); C111, concerning discrimination in respect of employment and occupation (1958); C138, concerning minimum age for admission to employment (1973); C182, concerning the prohibition and immediate action for the elimination of the worst forms of child labour (1999).

(⁶⁸⁵) On the concept of *labour standards* see ADB, ILO 2006, p. 9.

(⁶⁸⁶) See WCSDG 2004, p. 110. On the link between decent work and globalisation see also ILO 2005b and 2007.

(⁶⁸⁷) See UN 2005, par. 47.

the agreed programme, the objectives of full and productive employment and of a decent job for all are crucial points in national and international policies aimed at achieving the Millennium Goals (688).

The objective of a decent job for all is considered today as the “heart of social progress” (689) and is intentionally designed by the ILO in a sufficiently “open” manner (690) because of its global vocation. In fact, only a loose definition could make it feasible to achieve the desired results in profoundly diverse national contexts from economic, social and cultural points of view.

2. Intertwining paths.

This is not the place to give an in-depth description of the parameters of decent work set out by the ILO in 1999, however it is necessary to highlight here the influence they have exerted over European employment policies. That, specifically, starting from the EU's acceptance of the ILO's *decent work agenda*, an initiative which in concrete terms adopts a planned, balanced and integral approach to achieving the goals of full employment and a decent job for all on a global, regional, national and local level (691).

The *Lisbon agenda* (692) and the *decent work agenda* have already crossed respective paths in the past. In fact, decent work represents fertile ground on which to reopen the historic confrontation between ILO and the EU for social and economic progress, as well as improving living and working conditions and the promotion of employment.

In 2001, through an *exchange of letters* (693) between the European Commission and ILO (694), the consolidated tradition of cooperation was reopened, whose last act dated back to 1989. It was recognised that since the last act was published, social and employment problems had significantly increased, on a European and international level, and that to address these new challenges, “new integrated approaches [...] at various levels” were necessary to deal with the social aspects of globalisation (695).

The agreement of 2001 confirmed the willingness to cooperate, first hinted at in 1989. In partic-

“Employment 47. We strongly support fair globalization and resolve to make the goals of full and productive employment and decent work for all, including for women and young people, a central objective of our relevant national and international policies as well as our national development strategies, including poverty reduction strategies, as part of our efforts to achieve the Millennium Development Goals.

These measures should also encompass the elimination of the worst forms of child labour, as defined in International Labour Organization Convention No. 182, and forced labour. We also resolve to ensure full respect for the fundamental principles and rights at work”. (688) *Ibidem.*

(689) See the ILO declaration “Decent work - the heart of social progress”, in <<http://www.ilo.org>>.

(690) See COMMISSION 2006b.

(691) Cf. ILO 2007, p. 5; COMMISSION 2006a.

(692) Cf. COMMISSION 2000 and 2005a.

(693) The *exchange of letters* has value of an international treaty, according to the articles 2 and 13 of the *Vienna Convention on the Law of Treaties* (1969); see UN 1999.

(694) In OJ, 30.5.2001, C 156, p. 5, amended in OJ, 8.6.2001, C 165, p. 23.

(695) *Ibidem.*

ular, it confirmed the reciprocal invitation to regular meetings held in their respective headquarters and the exchange of information and opinions on questions of work, in the knowledge that a "joint reflection on new approaches to contemporary social issues", pooling together the respective expertise, "can both respond even more effectively to the need to promote employment opportunities and to maintain and improve living and working conditions worldwide" (696).

Following the WCSDG's 2004 report (697), the social dimension of globalisation, intended as the redistributive logic of benefits induced by global processes, became an element of the programmes developed by European institutions. The European Commission initiated a debate which combined the themes of globalisation, governance and decent work in a communication of May 2004 (698).

The European Parliament acknowledged internationalist appeals to reinforce the social dimension of globalisation, considering the promotion of decent works a priority on a national, European, and also global scale (699). According to European Parliament, guaranteeing a decent work which ensures union rights, social protection and gender equality is indispensable to eliminating poverty. The same EP, however, could not help but admit that still, at the end of 2005, the programme and objective of decent work for all represented a gap in EU foreign, commercial and monetary policies (700).

On the basis of this dichotomy, the Commission published a communication in March 2006 "*Promoting decent work for all - The EU contribution to the implementation of the decent work agenda in the world*" (701). This act represented the formal acceptance on the part of the EU of programmes and objectives of the global decent work agenda. In this form the gap feared by the EP was culminated.

The programme set up by the Commission, and it is here that we find the heart of the relationship between ILO's agenda and the Lisbon agenda, above all aimed to guarantee basic social rights (702) which make up the "minimum base" of rights established by the international community (703) already recognised by the Union (704).

The EU plan, however, was more ambitious and wider in scope, in that it included social aspects

(696) *Ibidem*.

(697) See above note 9.

(698) See COMMISSION 2004a.

(699) See PARLIAMENT 2005.

(700) *Ibidem*.

(701) See COMMISSION 2006a.

(702) Cf. COMMISSION 2006a and 2006b.

(703) See above note 7.

(704) The reference is to the problem of juridical effectiveness of the *Charter of Fundamental Rights of the European Union*, recognised by art. 6 of the Treaty on the EU as amended by the *Treaty of Lisbon*, in *OJ*, 17.12.2007, C306, p. 1. Cf. CARUSO 2008; BRONZINI, PICCONE 2007; CELOTTO 2006.

of sustainable development (705), aiming to build growth around values and principles for interventions and government action which unite economic competitiveness and social justice (706). In a such framework, then, on the one hand decent work was an integral part of the European social agenda, while on the other, it was a vehicle for the promotion and an external projection of the EU's model of integrated economic and social development (707).

The communication of 2006 had practical value because within a global framework it gave concrete indications on how to promote decent work, via:

- a) the protection of fundamental social rights, with particular attention to child labour and the gender dimension;
- b) investment policies which aid job creation;
- c) improved governance thanks to social dialogue;
- d) identifying and dealing with gaps existing in decent work legislation;
- e) the organisation of effective and permanent systems of social protection, education and training;
- f) improved cooperation and division of responsibilities between the main actors involved;
- g) reduced corruption due to fair rules of competition.

Having indicated the objectives and instruments, the Commission provided for a series of actions for the promotion of decent work:

- a) increased emphasis on this concept in the policies for development and aid given outside the EU, as well as in the agreements and international cooperation with countries outside the EU;
- b) the consolidation of collaboration with various stakeholders (regional and international organisations, business communities and other actors of the civil society);
- c) reinforcing decent work in a regime of trade liberalisation;
- d) an invitation to the Member States taking into account individual national character, to formulate a roadmap aimed at creating a decent job for all (708).

For the EU decent work is the object of both internal and external policies. With reference to the EU's situation, however, one cannot but note an excess of optimism in the picture outlined by the Commission. If on the one hand the Member States are encouraged to ratify and apply ILO conventions, on the other, the evidence on results already obtained, rather than on the gaps to be culminated, would seem to direct EU commitment more towards international cooperation than to internal policies, as if the levels of protection already in act or in any case pursued by the EU's social policies could supersede the necessity to implement decent work. As the Commission

(705) Cf. on the subject UN 1987.

(706) See COMMISSION 2006a.

(707) Cf. COMMISSION 2005b and 2006a.

(708) Cf. COMMISSION 2006a; PARLIAMENT 2007a.

said in its communication: “*The Community acquis in the fields of employment, social policy and equal opportunities in many respects goes beyond the international standards and measures which underpin the concept of decent work and incorporates the major principles of that concept. [...] Beyond the objectives of the decent work agenda, the Lisbon Strategy and the European Social Agenda provide a much broader political framework for resolute action in favour of employment, equal opportunities and social cohesion*” (⁷⁰⁹).

The premise for the preceding affirmations is supported by the Commission, by an emphasis which is almost promotional of the *European social model*, whose persistent vitality is challenged by the doctrine (⁷¹⁰) and requires a periodical effort of invigoration and modernisation on the part of European institutions (⁷¹¹). The postulate of the Commission cannot be condoned considering the enlargement of the EU to 27 Member States, which makes a single and universally valid model unthinkable, but neither can a Europe of variable social geometry be considered a viable option (⁷¹²).

Almost a year after the communication, the EP report on “*promoting decent work for all*” showed that the EU could play an important role in the promotion of decent work “through both internal and external policies” (⁷¹³). From the report it can be inferred that the situation regarding the protection of social rights in the EU of 27 Member States is not so advanced as the Commission had optimistically tried to present (⁷¹⁴). While on the one hand there is a general implementation of the fundamental rights of workers (⁷¹⁵), on the other hand it is noted that the majority of Member States had not yet ratified the ILO conventions regarding employment promotion and protection against unemployment (C168), occupational safety and health (C155), maternity protection (C183), equality of treatment and maintenance of social security rights (C118 and C157), migrant workers (C97 and C143). This implies, in certain contexts, levels of protection which are below international standards. The data, furthermore, is corroborated both in terms of number and quantity by the so-called “*decent work ranking*”, compiled in 2003 by the ILO and attached to the EP report (⁷¹⁶).

In this far from idyllic picture, the relationship between decent work and flexicurity in Europe emerges, recognised by the same rapporteur at the EP (⁷¹⁷), who considers that “labour market flexibility and employment security are not mutually exclusive objectives, but with appropriate

(⁷⁰⁹) See COMMISSION 2006a.

(⁷¹⁰) Cf. on the theme BLANPAIN 1998; JEPSEN, SERRANO PASCUAL 2005; HERMANS 2005; ALES 2007.

(⁷¹¹) Cf. EUROPEAN COUNCIL 2001 and 2003; PARLIAMENT 2006. See also beyond, par. 4.

(⁷¹²) Cf. CARUSO 2007b.

(⁷¹³) See PARLIAMENT 2007a.

(⁷¹⁴) More precisely from the Annex I to the report, which describes the level of ratification of the ILO conventions in the EU at 15, at 25, at 27 and in the countries candidated to adhesion.

(⁷¹⁵) As guaranteed by the ILO’s eight fundamental conventions; see above note 7. The exceptions are the Czech Republic and Estonia in relation to convention C138 on minimum age; cf. PARLIAMENT 2007a.

(⁷¹⁶) See Annex II in PARLIAMENT 2007a; GHAI 2003. See also beyond, par. 4.

(⁷¹⁷) M. Panayotopoulos-Cassiotou.

practices should reinforce each other" (718). The comment, in its synthesis, has considerable importance, as it does not perceive an oxymora in the relationship between flexibility and security, and above all it certifies flexicurity's "compatibility" with the concept of decent work, provided that it is pursued by means of "appropriate practices".

3. Flexicurity.

The European debate on modernising labour law (719), instigated by the European Commission with its green paper "*Modernising labour law to meet the challenges of the 21st century*" (720), has posed a series of interesting questions on the relationship between flexicurity and decent work in Europe.

In par. 49 of the conclusions of December 14th 2007 the European Council approved, without amendments, the agreement on the common principles of flexicurity reached by the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council on the 5th and 6th December 2007 (721), inviting the Member States "to take these principles into good account when developing and implementing national flexicurity-orientated policies" (722).

The principles approved by the European Council, according to the indications from Parliament (723), represent a "more balanced" solution compared to the Commission's proposal, but nevertheless a compromise. They were approved almost "in silence" and unanimously (724) by both the EPSCO Council of the 5-6th December and by the European Council of the following 14th December. The text is the result of a policy of mediation which on the one hand takes into account the thoughts of various European stakeholders (725), and on the other addresses the challenge of diversity and the enlargement of the EU to 27 Member States.

The delicacy of the interests involved determined contradictory results. The European Council, on one side, came to an agreement on the fundamental "minimums" for the co-existence of flexibility and job security in the order of national work; on the contrary, it could not reach an agreement on the two initiatives which could have helped the concrete implementation of the typical objectives of flexicurity (726). In fact, a consensus was not reached on the amended proposal of the Parliamentary directive and of the Council regarding working conditions for temporary agency workers (727), an area in which it is difficult to find an agreement (728), and on the proposal of

(718) Cf. PARLIAMENT 2007a.

(719) On the themes of the debate see SCIARRA 2007.

(720) See COMMISSION 2006d.

(721) See COUNCIL 2007d.

(722) See EUROPEAN COUNCIL 2007.

(723) Cf. PARLIAMENT 2007d, point 17; GROS-VERHEYDE 2007c.

(724) Cf. EURACTIV 2007.

(725) A comprehensive overview of the stakeholders' positions on flexicurity is contained in MASSIMIANI 2008.

(726) Cf. KUBUSOVA 2007; GROS-VERHEYDE 2007a.

(727) COUNCIL 2007b.

(728) Cf. ZAPPALA 2003.

amendments to the directive of Parliament and Council 2003/88/EC⁽⁷²⁹⁾, concerning certain aspects of the organisation of working time⁽⁷³⁰⁾.

As has been opportunely noted, it is one thing to reach an agreement on non-binding general principles, it is another to make them concrete legislative acts⁽⁷³¹⁾.

It was not, as has been claimed⁽⁷³²⁾, simply a matter of substituting the Lisbon strategy⁽⁷³³⁾, neither of obsessively pushing for its impossible objectives⁽⁷³⁴⁾, but to reinforce the implementation of the strategy, reinstating the main Lisbon intent to create "more and better jobs"⁽⁷³⁵⁾.

The nexus between flexicurity and the Lisbon strategy clearly emerges in the formulation of the first of the common principles approved by the Council⁽⁷³⁶⁾. Different to the principles proposed by the Commission, in the Council's act the Lisbon strategy is immediately mentioned and precedes every attempt to define the concept of flexicurity. The quality of work appeared in the first of the principles approved by the Council. It is a preliminary condition and the end result to which the forms of flexibility and security must aim, which are indicated as instrumental to achieving adaptability, the third traditional pillar of the European Employment Strategy (EES). Flexicurity became the "recipe" for modernising labour law and markets⁽⁷³⁷⁾ and its broad approach almost puts the contents of the Commission's green paper "in the attic"⁽⁷³⁸⁾.

The text approved by the Council generally defends social rights more than the Commission's. The model of protection for employees is directly derived from the tenor of the "new" principles no. 4 and no. 5, as approved by the Council⁽⁷³⁹⁾.

The substitution of the expression "flexibility in recruitment and dismissal" with the less stringent "contractual flexibility", regarding principle no. 5, represents the response to solicitations from

(729) In OJ, 18.11.2003, L 299, p. 9.

(730) COUNCIL 2007c.

(731) Cf. GROS-VERHEYDE 2007b. In more general terms, on the relationship between rigid forms of legislative harmonising and flexible forms of integration in EU policy, see CARUSO 2005; CINI 2001, p. 192.

(732) See the opinion of W. Cerfeda, ETUC confederal secretary since 2003, in TOTI 2007.

(733) See EUROPEAN COUNCIL 2000.

(734) Cf. AMOROSO 2006, p. 6.

(735) See EUROPEAN COUNCIL 2000.

(736) "(1) *Flexicurity is a means to reinforce the implementation of the Lisbon Strategy, create more and better jobs, modernise labour markets, and promote good work through new forms of flexibility and security to increase adaptability, employment and social cohesion*". See COUNCIL 2007d.

(737) Cf. CARUSO, MASSIMIANI 2007.

(738) Cf. CILONA 2007.

(739) "(4) *Flexicurity should promote more open, responsive and inclusive labour markets overcoming segmentation. It concerns both those in work and those out of work. The inactive, the unemployed, those in undeclared work, in unstable employment, or at the margins of the labour market need to be provided with better opportunities, economic incentives and supportive measures for easier access to work or stepping-stones to assist progress into stable and legally secure employment. Support should be available to all those in employment to remain employable, progress and manage transitions both in work and between jobs.*

(5) *Internal (within the enterprise) as well as external flexicurity are equally important and should be promoted. Sufficient contractual flexibility must be accompanied by secure transitions from job to job. Upward mobility needs to be facilitated, as well as between unemployment or inactivity and work. High-quality and productive workplaces, good organisation of work, and continuous upgrading of skills are also essential. Social protection should provide incentives and support for job transitions and for access to new employment*". See COUNCIL 2007d.

various directions, particularly from social partners⁽⁷⁴⁰⁾, intending to put employer's and employee's rights and responsibilities on the same level; enhance the multi-faceted nature of flexicurity; to guarantee, in brief, that the driving forces behind the strategy are not only backed by employees, but also by businesses. This can be inferred by a series of virtuous co-relations found in the new text, compared to that of the Commission. The techniques and the objectives of flexibility in the new system should not be exclusively the prerogative of employers, but must be opportunely counterbalanced by "secure transitions" of employees towards the labour market and within the labour market⁽⁷⁴¹⁾. Therefore it is clear why, according to the Council, the contractual solutions towards which it is necessary to progress, should not be just "stable" but also "legally secure". The guarantee of professional transitions represents the core of the new concept of "employment security", to which the traditional "job security"⁽⁷⁴²⁾ should give way. What changes is the basic idea: no more "security with a job" but "security of a job"⁽⁷⁴³⁾. "A job for life" is no longer a given fact, thereby making way for willingness to change, and new opportunities for personal growth and employment⁽⁷⁴⁴⁾. For the employee, this brings the risk of temporarily loosing her/his job, but this risk is counterbalanced (*rectius*, must be counterbalanced) by the intrinsic guarantees in flexicurity; from a network of *social security* to *active labour market policies* (ALMP)⁽⁷⁴⁵⁾. In brief, the "proactive" connotation of employability is emphasised⁽⁷⁴⁶⁾.

The credit for bringing employees' rights, rather than their responsibilities, to the forefront in the strategy of flexicurity is not ascribable to one single act or event, but is the result of a dialogue and an idea which has been gradually corroborated by contributions of the actors who have been progressively involved. Nevertheless it is possible to identify a key moment in the European debate on flexicurity. It concerns the Lisbon Conference on "*Flexicurity: key challenges*" held on the 13th - 14th September 2007. For the first time European ministers came together to discuss the principles elaborated by the Commission⁽⁷⁴⁷⁾. It was this meeting that highlighted the fundamental areas to be dealt with by the strategy; the need to make quality of work and social protection the focal points; a push towards global strategies⁽⁷⁴⁸⁾ of inclusion rather than segmentation regarding the *outsiders* on the labour market; emphasise the complimentary nature of employment security and job security rather than considering them as alternatives, thereby resolving the

⁽⁷⁴⁰⁾ Cf. ALBERTAZZI 2007; VITULANO 2007.

⁽⁷⁴¹⁾ On the theme of transitional labour markets (TLM), cf. SCHMID 1998 and 2006; HANCOCK, HOWE, CONSIDINE 2006; COMMISSION 2004b, p. 159. More specifically, on the relationship between flexicurity and TLM, see SCHMID 2007; MUFFELS, WILTHAGEN, VAN DEN HEUVEL 2002.

⁽⁷⁴²⁾ Cf. COMMISSION 2007a, p. 3. On the dichotomy within the flexicurity strategy between "employment security" and "job security", cf. EESC 2006.

⁽⁷⁴³⁾ Cf. PARLIAMENT 2007c.

⁽⁷⁴⁴⁾ Cf. LEONARDI 2007; EESC 2006.

⁽⁷⁴⁵⁾ See on this theme FREEDLAND, COUNTOURIS 2005; DE KONING, PEERS 2007.

⁽⁷⁴⁶⁾ Cf. CARUSO 2007a, p. 100.

⁽⁷⁴⁷⁾ See Rapid press release "*Flexicurity debate steps up a gear*", IP/07/1320, 13.9.2007, Brussels.

⁽⁷⁴⁸⁾ The dichotomy between *insiders* and *outsiders* in the labour market, evident in the principles proposed by the Commission, was later overcome by the Council through a global approach aimed at all workers regardless of their employment status; cf. COUNCIL 2007d.

trade-off between flexibility and security in a complimentary relationship between the two dimensions⁽⁷⁴⁹⁾; highlighting, in general terms, the social dimension of flexicurity⁽⁷⁵⁰⁾.

Furthermore, the Lisbon Conference sealed two fundamental aspects which countersign the principles adopted by the Council regarding the Commission's proposal: a) the need to monitor and check on flexicurity policies⁽⁷⁵¹⁾; b) the involvement of social partners in decision-making processes, via means of social dialogue and collective bargaining⁽⁷⁵²⁾. With reference to the first point, the Portuguese Presidency felt no need to introduce new methods of control, given that the framework offered by the Lisbon strategy was considered adequate to this end⁽⁷⁵³⁾. In relation to the second point, where in the Portuguese Presidency's conclusions (*rectius*, in the core directions) the participative forms under discussion are encouraged "in order to strengthen consensus, trust and commitment of all actors as factors of success"⁽⁷⁵⁴⁾, it is useful to note, on the one hand, the echoes of the so-called *deliberative democracy*⁽⁷⁵⁵⁾, on the other, a preview of a political choice which will receive maximum recognition in the Lisbon Treaty⁽⁷⁵⁶⁾.

The involvement of a number of stakeholders in deciding on the common principles of flexicurity constitutes the basic idea behind the Lisbon Conference. For this reason unions, NGO's and experts were invited in order to obtain a constructive confrontation between the positions of the institutions and the Member States. The contribution of the European social partners was particularly important, as it drew attention once again to the subject of protecting workers' rights⁽⁷⁵⁷⁾, in order to overcome two basic preoccupations: a) on the negative side, the fear that the strategy dissimulates a general tendency towards deregulation, and which puts the needs of employers before those of employees; on the positive side, the need to direct research to flexible solutions, or the implementation of existing models⁽⁷⁵⁸⁾, towards improving the rights of those who have

⁽⁷⁴⁹⁾ Cf. AUER 2007; COMMISSION 2006c, p. 77.

⁽⁷⁵⁰⁾ See the conclusions adopted by the Portuguese Presidency, together with Germany and Slovenia, "Key Messages from the Conference 'Flexicurity: key challenges'", in MASSIMIANI 2008.

⁽⁷⁵¹⁾ See the last part of principle no. 3 adopted by the COUNCIL 2007d, where it is requested that progress made in implementing strategies "should be effectively monitored".

⁽⁷⁵²⁾ See principle no. 7 in COUNCIL 2007d.

⁽⁷⁵³⁾ Requiring, however, a balanced approach which takes into account national differences; with reference to the conclusions of the Lisbon Conference, see above note 73.

⁽⁷⁵⁴⁾ See above note 73.

⁽⁷⁵⁵⁾ On participative processes of and in flexicurity, see WILTHAGEN, TROS 2004, p. 170; CARUSO, MASSIMIANI 2007.

⁽⁷⁵⁶⁾ The strengthening in a democratic sense of decision-making processes in the EU constitutes one of the main themes of the Lisbon Treaty. The role of the European social partners, in particular, is highlighted by the EU Treaty via the insertion of the new art. 136a in the EU Treaty, according to which:

"The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy.

The Tripartite Social Summit for Growth and Employment shall contribute to social dialogue".

⁽⁷⁵⁷⁾ Cf. VITULANO 2007; ETUC 2007b. During the European debate on flexicurity, the ETUC was one of the first participants to strongly sustain the inextricable link between the flexibility and security agenda and that of the quality of work. According to the Confederation, the quality of work holds the balance in order that the equilibrium between flexibility and security does not go to the advantage and profit of employers. In other words, the quality of work - in all its dimensions, from decent wages to investment in training, from safety to social protection - brings workers back into the equation between flexibility and security, allowing for a fairer distribution of the costs/benefits relationship between the parts; cf. ETUC 2007a.

⁽⁷⁵⁸⁾ Cf. COMMISSION 2007d.

precarious work situations, without reducing existing rights. As, in fact, various stakeholders stressed, if it is true that the globalisation of markets implies ever increasing adaptability in existing and future forms of employment, it is equally true that the EU cannot allow Member States to compete via precarious work⁽⁷⁵⁹⁾, thereby transforming flexicurity into “flexploitation”⁽⁷⁶⁰⁾.

The agreement of the European social partners of 18th October 2007 “Key challenges facing European Labour markets: a joint analysis of European social partners” represents the consecration of a multilateral, holistic and balanced approach which was recognised in the common principles approved by the Council⁽⁷⁶¹⁾. In their joint analysis, the social partners identify the challenges posed by flexicurity and address recommendations to themselves, to the Member States, to the Commission and to the Council. In the intentions common to the various representative organisations, meeting the challenge posed by the new strategy means (also) linking flexicurity with the quality of work (see beyond, par. 4)⁽⁷⁶²⁾. The core of the agreement, in the specific area of flexicurity, is that flexible forms of contract must be balanced with adequate social protection and protection in professional transitions, by strategies of qualification or requalification via training, from the guarantee of “good working conditions”⁽⁷⁶³⁾.

The need for “good work” was pointed out by various parties, and on the part of some⁽⁷⁶⁴⁾ it was thought that at the centre of the new *integrated guidelines for growth and jobs 2008-2010* (see beyond, par. 4) should be “good work” and not flexicurity, as explained in the conclusions of the informal ministerial meeting held in Berlin on the 19th of January 2007⁽⁷⁶⁵⁾. The realisation since that meeting, is that more flexibility on the labour market must necessarily be counterbalanced by the recognition of adequate social rights, including the right to participate via representation.

There is a close link between the concept of “good work” approved by the German Presidency of the EU and the notion of “decent work” belonging to the ILO tradition. Good work, however, is something more, which goes beyond the pillars of global decent work (see beyond, par. 4). As

⁽⁷⁵⁹⁾ See the contribution of J. Monks, General Secretary of the ETUC, in VITULANO 2007.

⁽⁷⁶⁰⁾ See the debate on the theme “Flexicurity or flexploitation? Atypical work in Europe” organised by the socialist group at the European Parliament; cf. MASSIMIANI 2008.

⁽⁷⁶¹⁾ ETUC, BUSINESSEUROPE, UEAPME, CEEP 2007.

⁽⁷⁶²⁾ *Ibidem*, p. 53: “Furthermore, flexicurity needs to be accompanied by the provision of good working conditions and quality of jobs as outlined below.

Quality of work has several dimensions: Ensuring career and employment security, maintaining and promoting the health and well-being of workers; developing skills and competencies; and reconciling working and non-working life. In addition, pay, equality and diversity at work are also important.

Quality of work is an important element in making the most of a society’s potential and can be conducive to economic growth and productivity. See also above note 80.

⁽⁷⁶³⁾ *Ibidem*, p. 53 and p. 62.

⁽⁷⁶⁴⁾ Such is, for example, the position adopted by the GUE/NGL group of the EP in an “open letter” to the socialist group; cf. WURTZ, LIOTARD, MUSACCHIO, ZIMMER 2007.

⁽⁷⁶⁵⁾ In accordance with the cited conclusions, “GOOD WORK means employee rights and participation, fair wages, protection of safety and health at work as well as a family friendly work organisation. Good and fair working conditions as well as an appropriate social protection are indispensable for the acceptance of the European Union by its citizens”. See the press release “Chair’s Conclusions drafted in Cooperation with the two Following Presidencies Portugal and Slovenia”, 19.1.2007, in <<http://www.eu2007.de>>.

previously noted, with the adoption of the global decent work agenda (⁷⁶⁶), the European institutions have been informed about the commitment to common cooperation aimed at promoting the possibility of decent work in every part of the world, principally in those countries in which there is a lack of minimum rights at work, the so-called hard core guaranteed by the ILO. A commitment, therefore, which transcends the confines of Europe. Via exegesis, the use of the adjective "good" instead of "decent" is symptomatic, indicating that something more which reflects, or rather should reflect, the situation of European labour markets compared to those in which there is still a lack of minimum guarantees for workers. The use of the conditional form "should reflect" is used for a corrective reading of such an assumption, for the reasons which have already been analysed (see above par. 2). In particular, considering EU enlargement to 27 Member States, one cannot fail to mention the weakened level of protection of workers rights in many national markets, due to the need to compete on lower production costs. On the other hand, the superimposition of the contents of the two notions of "good work" and "decent work" cannot be overlooked. For example in the former there are headings such as "rights at work" and "social protection" which are reproduced in the pillars of decent work.

The conclusions of Berlin affirmed a wider concept with more emphasis on safeguarding workers' rights compared to that of decent work. In this context a relationship between standard forms of working relationships (⁷⁶⁷) and flexibility was established which would find no place in the common principles of flexicurity (⁷⁶⁸). Flexibility, from the point of view of safeguarding rights, should be a sort of auxiliary strategy, above all aimed at reintegrating the least protected employees into the labour market. Therefore, the concept of flexibility was immediately allied to that of security to prevent the possibility that "more labour flexibility will lead to a reduction of social protection for employees" (⁷⁶⁹). For this reason, too, the State Members were invited to strengthen the common forms of working relationships and to implement effective controls and precautionary policies regarding the exploitative use of atypical jobs.

There is no trace, however, of all these points in the common principles of flexicurity proposed by the Commission, nor in those adopted by the Council. These latter certainly appear to be more balanced and geared towards safeguarding workers' rights than the former, but they do not fully respond to the solicitations of various parties for the protection of workers' rights. There is no reference to the relation between traditional forms and more flexible forms of working relationship, nor to policies controlling possible malpractice in the event of atypical work. There remains

(⁷⁶⁶) Cf. COMMISSION 2006a.

(⁷⁶⁷) See also the sixth consideration and the preamble of the Council directive 1999/70/EC of 28 June 1999, concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, in *OJ*, 10.7.1999, L 175, p. 43.

(⁷⁶⁸) According to the abovementioned conclusions, "*Fair wages are an important characteristic of GOOD WORK. The Member States and the social partners are called upon to ensure that wages are set in a fair and adequate manner while safeguarding the national wage setting systems' characteristic features [...]*

Regular employment relationships are indispensable. They provide security and strengthen competitiveness in a sustainable manner. The Member States are called upon to strengthen standard working relationships in accordance with their national practice and to limit their circumvention by atypical employment relationships.

New forms of employment types can facilitate reintegration into the labour market. They must, however, not be abused for the purpose of excluding employees from their rights. They must not lead to discrimination and exclusion". With reference to the press release cited above, note 88.

(⁷⁶⁹) *Ibidem.*

on the subject a vague invitation from the Council to make effective controls on the progress in the implementation of the strategy, without any inherent specification as to the type of controls to be used.

4. A possible co-existence?

In both of the Commission's main proposals and in the principles adopted by the EU Council, there is absolutely no reference to decent work, in spite of the express request voiced in the Parliamentary resolution of 29th November 2007 (⁷⁷⁰). The European Council of 14th December 2007, overriding the approach of the EU Council, demonstrated its sensitivity towards European Parliament's appeal, but rather than incorporating the promotion of decent work into the common principles of flexicurity, it restricted itself to approving the agreement reached on the subject by the EPSCO Council on the 5th and 6th of December 2007, confirming in another and subsequent paragraph of its conclusions "its commitment with the decent work agenda as a global instrument to promote employment, better labour standards and foster development" (⁷⁷¹). Without enlarging too much on the merits of the European Council's choice here, on this subject at least two orders of consideration emerge. In the first place, the commitment to the decent work agenda is assumed in the same global perspective with which the Commission's communication of 2006 was posed, therefore, once again, more as an international policy rather than internal. In second place, this commitment is reaffirmed, subordinate to the active policies of inclusion, almost as if wanting to bring decent work into the realms of *social protection and inclusion* (⁷⁷²), rather than to the flexicurity strategy.

It could be argued that the omissions regarding decent work in the common principles of flexicurity are due to an explicit choice on behalf of the Council, which has opted for the more general concept of "good work" with the above mentioned definition, thereby extending the need for protection desired by Parliament.

In fact, the concept of "good work" to which the Council accedes seems to reproduce the notion of "quality of work" which underpinned the Lisbon agenda. It is no coincidence that in the first common principle of flexicurity the expression "good work" is used in correlation to the pillar of adaptability and subordinate to the need to reinforce the implementation of the Lisbon strategy. If the assumption is proved right, it is necessary to understand if decent work is included in that expression or if it represents a concept which is different in both substance and breadth.

The judgment requires a comparison which, bearing in mind the current state of EU affairs, is far from easy. In order to make comparison, it is necessary to have certain indicators which measure the components expressed by the phenomena which are to be examined. Given the traditional difficulties in expressing in numbers qualitative rather than quantitative phenomena (⁷⁷³), and given, above all, as ascertained, the absence of official indicators on the progress in implementing

(⁷⁷⁰) See PARLIAMENT 2007d, point 17.

(⁷⁷¹) See EUROPEAN COUNCIL 2007, par. 49 and par. 50.

(⁷⁷²) See on the subject the web-site set up by the DG for Employment, Social Affairs and Equal Opportunities of the European Commission: <http://ec.europa.eu/employment_social/spsi/index_en.htm>.

(⁷⁷³) See MASSIMIANI 2007, p. 111.

the decent work agenda in Europe (774), no evaluation at this moment would be easy, even taking into account international indicators of the ILO (775) and the indicators of quality of the Lisbon agenda (776). On the other hand, it was the same European Parliament who requested that the Commission, in consultation with the State members and social partners, and in collaboration with the ILO, propose indicators which identify and quantify the levels achieved regarding decent work (777).

As demonstrated by the EP report on decent work, it is possible to note a gap between the objectives of principle and the effective reach of the social policies aimed at the Lisbon agenda, particularly from the point of view of European enlargement. Without wishing to contest the idea that the Lisbon strategy and European social agenda in general go "beyond the objectives of the decent work agenda" in providing "a much broader political framework for resolute action in favour of employment, equal opportunities and social cohesion" (778), it cannot be denied that a deficit in protection in fundamental social rights still exists in many EU countries, (also) due to the non-ratification of many of the ILO's conventions (779).

Nevertheless, given that quality of work expresses a broader concept compared to decent work, with higher levels of protection, if one considers that a reference to the quality of work was already present in the sixth of principles of flexicurity proposed by the Commission, it is incomprehensible as to why Parliament insisted in requesting that the European Council adopt common principles which specifically promote decent work (780). There are two possible explanations: the first, that it was simply an egregious oversight, or secondly, that being the source of the report and the resolution on decent work (781), the EP wanted to send out an unequivocal message to the other European institutions, and to the Council in first time, to correct the imbalance between rights and responsibilities of the protagonists of flexicurity, reinstating centrality to dignity of work.

In order to answer such a question, it could be useful to examine the most recent developments regarding flexicurity.

Flexicurity emerges as a protagonist in the new cycle of the Lisbon strategy. In the proposed

(774) See, however, the study by A. Tangian on the so-called "composite indicators" of decent work, taken on the basis of the 4th survey of working conditions in Europe, by the Dublin Foundation; with reference to TANGIAN 2007; EUROFOUND 2007.

(775) Cf. ZARKA-MARTRES, GUICHARD-KELLY 2005.

(776) Cf. COMMISSION 2001.

(777) Cf. PARLIAMENT 2007a.

(778) Cf. COMMISSION 2006a.

(779) As M. Panayotopoulos-Cassiotou stated at the conference "Decent work for all - mobilising the EU and its partners", held in Brussels on the 24th and 25th January 2008, "l'UE ne peut toutefois prétendre à l'exportation de son modèle social et de ses valeurs si elle n'enjoint pas d'abord ses États membres et les pays candidats à ratifier et à appliquer pleinement les conventions que l'OIT a classées comme étant à jour, en particulier celles qui concernent le travail décent ainsi que la Convention des Nations Unies relative aux migrants qui continuent d'être victimes d'exploitation, sans oublier celles relatives à l'hygiène et à la sécurité au travail". Refer to the web-site set up by the DG for Employment, Social Affairs and Equal Opportunities:

http://ec.europa.eu/employment_social/international_cooperation/decent_work_conf2008_en.htm.

(780) According to the resolution of EP, common principles of flexicurity should include "reconciling employment and family or private life, and promoting the concept of 'decent work"'; cf. PARLIAMENT 2007d, point 17; COMMISSION 2007a.

(781) Respectively, PARLIAMENT 2007a and 2007b.

guidelines for growth and jobs 2008-2010 (782), the Commission requests an even greater emphasis on flexicurity, confirming the 21st guideline of the previous cycle (783): “*Promote flexibility combined with employment security and reduce labour market segmentation, having due regard to the role of the social partners*”.

If this guideline is simply to be reconfirmed, the question begs as to what exactly is new in the new strategy. Firstly, the fact that the term “flexicurity” is officially accepted and appears in the EES’s official acts (784). Furthermore, the so called *flexicurity approach* becomes pivotal in reaching the target of full employment, theme which underpinned the vision of Lisbon (785). There is, above all, the fact that flexicurity is expressly linked to the concept of quality of work, which encompasses specifically the question of wages and other benefits, working conditions, access to permanent training and career prospects (786). The passage is of noteworthy importance, as it overcomes the qualms and uncertainties about the feasibility of balancing flexibility with security, on the one hand, and between flexicurity and decent work on the other. In maintaining that quality of work, with the above mentioned definition, plays a crucial role in the flexicurity approach, the ground is cleared from any doubt and an answer is given to the question posed previously. It is an important answer, which highlights the European institutions’ courage to go beyond the original position which was still bound to freedom to fire, unaccompanied by the provision of real professional transitions towards not only a “stable” employment, but also “legally secure” (787).

The influence exercised by the various actors concerned in the process of defining the principles of flexicurity is evident (788).

5. Latest developments.

Following the invitation contained in the conclusions of the EPSCO Council of 5-6th December 2007 (789), the Commission launched a public initiative in February 2008, in close cooperation with the European social partners, called “*Mission for Flexicurity*” (790). The initiative, which is divided into parts with precise deadlines, aims to help the Member States of the EU to implement the common principles of flexicurity in the respective national contexts. At this point, the ball is placed firmly in the court of the 27, as it should be recalled that the flexicurity formula does not have a

(782) COMMISSION 2007c.

(783) See COUNCIL 2005.

(784) See on this theme CARUSO, MASSIMIANI 2007.

(785) Cf. COMMISSION 2007c.

(786) *Ibidem*.

(787) Cf. COMMISSION 2007a and 2007c; COUNCIL 2007d.

(788) See above par. 3.

(789) On this occasion, the Commission was been invited by the Council “*to launch a public initiative in close cooperation with the European social partners in order to facilitate the ownership of the principles by the relevant stakeholders on the labour market, and to raise the awareness of citizens of flexicurity, its underlying logic, its main elements and its implications, and to keep the Council fully informed of its actions in this respect*”; see COUNCIL 2007d.

(790) Cf. COMMISSION 2008. Refer to the web-site set up by the DG for Employment, Social Affairs and Equal Opportunities: http://ec.europa.eu/employment_social/employment_strategy/flex_mission_en.htm.

single model of the labour market, nor a single political strategy, but as many models and strategies as there are Member States, to whom the ultimate responsibility is given to create sustainable practices of flexibility and security.

At the end of this "participated" project outlined by the Commission (791), a report will be written and presented at the EPSCO Council in December 2008.

The mission is expressly designed in accordance with the Lisbon strategy, given that it intends to facilitate the integration of flexicurity in the processes and strategies of the 2008-2010 cycle of integrated guidelines for growth and jobs.

The confirmation is reiterated in the conclusions of the European Council of 13th-14th March 2008, with an invitation to Member States "to implement the agreed common principles on flexicurity by outlining in their 2008 National Reform Programmes the national arrangements giving effect to those principles", under the premise that "there is no single flexicurity model" (792).

The conception of flexicurity arrived at during the spring European Council is bilateral and comprehensive. It is bilateral because it is directed at both workers and employers, comprehensive because it includes all the components of flexicurity which emerged from the defining process of the strategy, which covers the entire life-cycle of working citizens.

The specific profiles of protection dealt with by the spring European Council can be found in the conclusions on flexicurity and pertain to crucial points for the promotion of decent work in Europe, such as employment for young men and women, and the disabled, work-life balance and gender equality (793).

EU policy, it would seem, is working towards an increasingly consistent idea that there can be a virtuous co-relation not only between flexibility and security but also between flexicurity and quality of work (794).

Legenda.

ABL - Australian Bulletin of Labour

ADB - Asian Development Bank

COMMISSION - European Commission

CONQUISTE - Conquiste del Lavoro

COUNCIL - Council of the European Union

CRS - Centro per la Riforma dello Stato

D&L - D & L Rivista critica di diritto del lavoro

DLM - Diritti Lavori Mercati

(791) The project provides for the intervention and reciprocal consultation of the EU institutions, Member States and social partners; refer to CARUSO, MASSIMIANI 2007 on the participative processes which characterise flexicurity strategy.

(792) See EUROPEAN COUNCIL 2008, par. 16.

(793) *Ibidem*.

(794) See on the theme AUER 2007.

DLRI - Giornale di diritto del lavoro e di relazioni industriali
DP WZB - Discussion Papers Wissenschaftszentrum Berlin für Sozialforschung
DRI - Diritto delle relazioni industriali
EESC - European Economic and Social Committee
EUOBSERVER - EUobserver.com
EURACTIV - EurActiv.com
EUROFOUND - European Foundation for the Improvement of Living and Working Conditions
EUROPEAN COUNCIL - European Council
EUROPOLITICS - Europolitics social
ETUC - European Trade Union Confederation
GA - Giustizia Amministrativa
ILJ - Industrial Law Journal
ILO - International Labour Organization
ILR - International Labour Review
JEPP - Journal of European Public Policy
OJ - Official Journal of the European Union (formerly Official Journal of the European Communities)
PARLIAMENT - European Parliament
RASS. SIND. - Rassegna Sindacale
RASSEGNA.IT - Rassegna Online
UN - United Nations
WCSDG - World Commission on the Social Dimension of Globalization
WP CSDLE "Massimo D'Antona" - Working Papers Centro Studi di Diritto del Lavoro Europeo "Massimo D'Antona"

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