

**European common principles
on flexicurity and the synthesis
between flexibility and social
security within industrial
relations in the banking system**

November 2007

1. The European Commission's Communication entitled "Towards common principles of flexicurity: more and better jobs through flexibility and security"

The EC's recent Green paper dated 22 November 2006 which places a special focus on the issue of "modernizing labour law to meet the challenges of the 21st century" gave way, both on the national and international level, to an ample debate on the question: how to promote the evolution of labour law in such a way as to support the objectives of the Lisbon strategy while also encouraging sustainable growth with a greater number of work positions of higher quality.

The need to modernise labour laws in order to promote and guarantee the adaptability of both companies and workers, along with job security, has become imperative for the Commission which, consequently, started to define the first guidelines of a flexicurity-based approach in the mentioned Green paper.

In effects the Commission's 27 Communication dated June 2007 (COM 2007 359) and entitled "Towards common principles of flexicurity: more and better jobs through flexibility and security" proposes a list of potential guiding principles flexicurity to be adopted at a European level.

The Commission points to flexicurity (defined as "a structured approach aimed at the simultaneous promotion of flexibility and security on the labour market") to deal with the challenges raised by globalisation (e.g. outsourcing, delocalisation, etc.) and by other current changes, such as ageing populations and long term unemployment which undermine social security systems, in addition to the tendency of dividing the labour market between 'insider' and 'outsider' workers.

The final objective is to conciliate flexibility with security, in other words to set up a number of safeguards capable of allowing 'positive transitions' in

everybody's life, encompassing school to work, one job to the next, times of unemployment to times of employment, active life to retirement.

The Commission bases its strategy for flexicurity on a structured approach which aims to reap advantages for workers and companies alike through the different combination, based on the characteristics of each individual national labour market, of four main directions of social and work policies: flexible and reliable contracts; lifelong training; active labour market policies; modern social security systems.

The above elements are capable, in the Commission's opinion, of reciprocally strengthening one another; rather, it is integration of the same that creates an 'added value' that is better suited to the reality of the individual labour markets of EU Member countries.

Viewed in the context of the above mentioned political guidelines, the proposals which the Commission intends to submit to the European Council – following ample consultations with all stakeholders – address eight 'common principles on flexicurity' on which Member states are called to express their hopefully converging opinions.

In brief, the actions are the following:

1. strengthen implementation of the EU's strategy for growth and employment and for the European social model;
2. strike a balance between rights and responsibilities;
3. adapt flexicurity to the various circumstances, needs and challenges which face Member states;
4. close the gap between those who hold atypical, occasionally precarious forms of employment (outsiders) on one side and those who hold a permanent full-time job (insiders) on the other;
5. develop internal and external flexicurity;

6. support gender equality and promote equal opportunities for all;
7. identify well balanced political strategies and fuel a feeling of mutual trust between social partners, public authorities and the other interested parties;
8. ensure an equal distribution of costs and benefits deriving from flexicurity policies and contribute to valid and economically sustainable financial policies.

Furthermore, the Commission “suggests” four typical pathways (deal with contractual segmentation; develop flexicurity within companies and offer security during transition; deal with the lack of skills and opportunities within the work force; improve opportunities for those who receive social security and for undeclared workers) with the intention of presenting Member states with the set of tools needed to develop flexicurity strategies tailored to the various challenges that have to be met at a national level by the individual nations.

Finally, it is important to emphasise how the imposition of a ‘one size fits all’ solution should be avoided; in effects there is a reasonable understanding that the realities of the labour market differ noticeably within the EU (for example, in certain countries efforts could focus on solutions sought at a company level, whereas in others greater attention could be paid to transition between different jobs).

It is only the real experiences and strategies matured in Member countries, according to their specific traits, both legal and social, that are capable of forming the starting point for a well balanced and structured approach to flexicurity.

2. ABI's Considerations

ABI has a substantially positive opinion of the Community project which aims to promote, in a serious and practical manner, the debate on the topic labour law renewal; nevertheless ABI must also note that, in certain points, the ideas of the Commission cannot avoid being the subject of constructive criticism.

ABI fundamentally believes that the 'political' approach to the issue of flexicurity cannot do without, primarily, a suitable appreciation of social debate at all levels.

Furthermore, the matter of lifelong education must also be adequately appraised; thirdly, ABI calls for tangible support of active labour policies capable of helping those who are unemployed or inactive to reintegrate themselves in the labour market thanks to more flexible regulations, including in the field of social security, thereby meeting the needs of people who switch or momentarily abandon work.

For this matter, it should be pointed out that the current predominant and traditional figure of work relations (based, as acknowledged, on standard open-ended labour contracts) is no longer capable of meeting the challenges and opportunities arising from the process of globalisation and consequent adaptations in organisation and production.

This is especially true in a labour intensive service sector, as is the financial and banking one, where the referring 'perimeter' of activities has undoubtedly assumed cross-border characteristics.

To illustrate this concept, just think that Europe today counts 46 banking groups with cross-border operations that together claim a 68% share of the continental market.

As mentioned, we must therefore ascribe particular relevance to social debate on all levels: European, national and sectorial, but also on a Group

and/or company level, aimed at introducing new forms of flexibility and proving that the 'rules of the game' applicable to the workplace are capable of meeting the challenges posed by economic realities in perennial evolution.

It must be remembered how, at EU level, the past has witnessed the issuance of several political and legislative measures aimed at combining, in various contexts, new forms of flexible labour with a minimum of social rights for all workers, the 'foundations' of which are rooted in European social dialogue.

Amongst others, we can point to directives on part-time work (Directive 97/81/EC) and on fixed-term work (Directive 99/70/EC) which have made enforceable the framework agreements of European social partners aimed at setting principles of equal treatment between part-time and fixed-term workers and full time workers.

Another relevant 'passage' has been identified in the adoption of the 2002 framework agreement on telework.

In light of the above arguments, ABI shares the opinion drafted by the "European economic and social committee" on 11 July 2007 (2007/C 256/20) in the part where it emphasises the need to strengthen the role played by the social partners, which should partake in all debates on flexicurity and which should hold a privileged position in EC consultations.

Also at a national level the social partners of the Italian banking sector have long identified a number of tools - mentioned below - which can easily be included in the realm of policies on flexicurity.

As for the matter of employment and contractual flexibility, ABI believes that the proposals launched by the Commission should be accepted, seeing that the quota of employment represented by workers recruited on the basis of contracts other than the standard model and workers who hold an

as independent status has increased from more than 36% in 2001 to approximately 40% of the EU-25 workforce in 2005.

Equal consideration is given to the fact that Europe is experiencing a period of progressively increasing employment which, compared to 2006 and on the basis of recent Eurostat figures, in 2007 witnessed an increase of some 3 million workers in the whole EU, whose number has now levelled up to 222 million workers (Quarterly EU Labour Market Review – Autumn 2007).

Consequently ABI believes that the labour law – in its most current and modern form – must evolve from being an instrument for the protection of employment into a tool for the creation of new jobs.

This objective must be, of course, primarily pursued by individual Member states which must start by first intercepting, and then eliminating, any residual rigidities in their respective labour markets, including with the help of an exchange of experiences between Member states and by monitoring reforms implemented at a national level.

To this end the Commission could play a decisive role by acting as a 'facilitator' and a nervous centre controlling the exchange of viable national and sectorial practices applicable in this field.

ABI believes that the reform of the labour market in the various Member states must be preceded by an accurate analysis of the individual markets, followed by a verification of how the flexible and diversified solutions adapt to the various national contexts and help to create new jobs.

In this sense the concept of 'flexicurity' must be viewed as a tool for the improvement of flexibility capable of creating, at the same time, new jobs through the various possible forms of work; however the fundamental rights of workers must be duly recognised with adequate protection, bringing to the surface the forms of illegal and undeclared employment that are present in many Member states.

Another direction which ABI believes that the Commission should further develop involves the notion of 'employability', understood as the development and strengthening of lifelong professional training and retraining of workers aimed at allowing professional mobility and adaptability within the labour market.

This would presuppose a specific and structured focus on how to offer employment, with an eye to creating the conditions needed to set up a more inclusive market than the current one.

ABI is of the opinion that activities should be carried out in a way that allows labour laws and collective negotiations to contribute, in a synergic manner and depending on relative competences, to the effective operation of the labour market.

It is known that the relation between labour law and collective bargaining differs from country to country: we must once again re-establish the need for the European Union to guarantee compliance in the various regulatory systems, avoiding the imposition of standard models but shielding, in particular, the level of collective bargaining from excessively invasive legislative interferences.

Furthermore ABI cannot share the Commission's distinction between 'insiders' (those employed with open-ended contracts) and 'outsiders' (those employed with flexible contracts) because such a distinction does not reflect the current reality.

A correct approach to flexicurity should instead exclusively classify the unemployed as 'outsiders', not including the so-called 'atypical' or flexible forms of employment amongst those that lack protection.

All those employed according to the various contractual forms should therefore be listed amongst the 'insiders' insofar as they participate in Europe's economic and productive development, otherwise there is the real

danger of resorting to old and stereotyped schemes that were abandoned long ago.

We must also note a discrepancy between the Commission's intention to promote greater flexibility within individual European labour systems and the unceasing production of EU regulations in the social sector which tends to introduce – lowering them from above – new rigidities (one example for all: the Proposal for a Directive on working time).

On the one hand the Commission calls for a greater involvement by the social partners on a European level as well as on a national level, and on the other we nonetheless notice the Commission's need to accelerate the approval of new Directives and the consequent introduction of further rigidities.

Such conduct has raised a number of problems which must be overcome – in ABI's opinion – through the increased intervention of the social partners at a regulatory level carried out in the competent forms and offices; otherwise there is the real risk that the commitments adopted in Lisbon will continue to be disappointingly skirted.

ABI believes that the introduction of new regulations at Community level that have not been agreed with and between the social partners will lead to the immobilisation of a labour market that is already stagnant enough in Italy as elsewhere (particular attention is drawn to the proposed revision of the Directive on working time, with specific reference to the possibility of eliminating the opt-out clause).

Given that the fundamental rights of workers are not, and should not, be the object of discussion, it might be a good idea to promote the extension of these fundamental rights to new EU Member states.

The proposal which can be reasonably advanced is – on the level of European banking social partners – to open talks on the issue of flexicurity

in order to delimit the topic of 'modernisation of labour laws' and to give way to an unconditioned debate, filling the concept with real substance and content.

It is not a coincidence that new Member states could act as a true measuring stick of the effectiveness of a new labour law insofar as the latter (as directly witnessed during multilateral and bilateral meetings held in the context of European social dialogue) oscillate between situations where the 'rights of workers' or of trade union organisations face difficult challenges and realities that inherit substantial market rigidities.

The favoured area wherein the practical sustainability of the notion of flexicurity could be fairly assessed may in truth be that of the impact assessment for Nations of the so-called 'new Europe', on the grounds of the proven methodology adopted by the Commission of the "Working paper" dated 27 June 2007, attached to Communication 359/2007, which follows the so-called 'third option' (flexicurity approach through the open method of coordination) aimed at adopting "an integrated approach covering contractual arrangements, credible lifelong learning systems, active labour market policies, and modern social security systems".

As regards European social dialogue, with the joint declarations on lifelong professional training in 2003, on Corporate Social Responsibility in 2005 and those which should be wrapped up – hopefully in the near future – on the issue of the demographic trend of the banking sector, the European social partners have already demonstrated an ample and effective capability for debate aimed at reaching specific understandings.

ABI is ready, in its role as one of the leading employers sitting at the European social round table, to deal with the issues raised by flexicurity, though it must mark out the field of application and take into due consideration the enormous differences which exist in the European Union.

3. An example of flexicurity in the banking sector: the sector's Solidarity Fund (Fondo di Solidarietà di settore)

If it is true, as stated by the Commission, that companies and workers can benefit both from flexibility and security because of, for example, improved work organisation, 'ascending' mobility generated by improved skills, and investments in training capable of benefiting workers and companies alike, we can reasonably argue that the social partners active in the Italian banking sector identified quite some time ago negotiated solutions which conform well to a number of the principles described above.

On this occasion ABI wants to briefly draw attention to an example of a 'modern social security system' (to use the Commission's own words) which offers adequate support to revenue, encourages employment, simplifies mobility across the labour market and supplies tools to ensure - through training - the ongoing adaptability and employability of workers: the banking sector's Solidarity Fund (Fondo di solidarietà del settore bancario).

First of all we must state that the Fund, in time, has fully met the objectives which the sector's social partners intended to ensure through the agreements which the social partners concluded on 4 June 1997 and on 28 February 1998; we point to the fact that this tool was intended to endow the banking sector with an effective 'damper' capable of making up for the lack of other public social security instruments covering our specific sector (for example, the 'Cassa Integrazione Guadagni', the wages guarantee fund for temporary unemployment compensation).

In effect the Solidarity Fund - legislatively governed by Decree 158 of 28 April 2000 (as amended by Decree 226 of 28 April 2006) - allowed and favoured the setup, by Italian banks, of projects for strategic and competitive repositioning by means of non-traumatic staff resizing and a form of 'accompaniment' to pension for redundant workers.

We must emphasise that such a tool, of unquestionable 'social' value, does not in any way take a toll on State finances because, from an economic point of view, it lies entirely on the shoulders of the involved companies; rather, what is asked of public legislation is that it avoid – given the high level of charges and labour costs sustained by the banks – the introduction of rigidities or further economic costs which in fact could potentially 'neutralise' their effectiveness and use.

On the point we note a widespread convergence between employers and trade unions: in effects, on 20 June 2007 the 'Minutes of the meeting on employment and the revival of the sector's Solidarity Fund' – signed by ABI and by the sector's 9 trade unions – re-established important principles on employment and on the 'sustainability' of the Solidarity Fund.

At the same time the Fund also caters to other functions which are conceptually close to the notion of flexicurity: even in situations which do not originate from restructuring processes, spin offs, etc., banking companies can make use of the tool which facilitates the option of voluntary retirement; in this context banks can therefore encourage employment and 'rejuvenate a company's existing human resources creating – though with varying numbers depending on the various contexts – employment.

Furthermore, the Fund's 'ordinary' activities finance training programmes which have been agreed upon between trade unions and companies with the objective of re-converting and/or re-qualifying subordinate employees.

Once again there is evident harmony with the Commission's provisions on vocational training, especially when the Commission states that "the approach to lifelong training" must aim to "ensure the continual adaptability and employability of workers, particularly the most vulnerable".

For the sake of completeness, we must also point out how – in reference to contractual flexibilities and active labour policies – social partners may,

where competent, operate identifying the correct 'balances' in the context of collective bargaining, in light of the sector's employment needs and of the banks' organisational needs.

However it is the institutions that are assigned with the task of tracing out the regulatory framework of reference by adopting guidelines and policies for employment and social security; for this matter, on this occasion we cannot help but mention the recent Protocol of 23 July 2007 concluded between the Government and the social partners on the topic of "welfare, employment and competitiveness for equity and sustainable growth".

This agreement – whose legal implementation is currently being examined in Parliament – sets the acceptable goal of promoting a lasting, balanced and sustainable form of financial and social growth by increasing the Country's competitiveness, creating quality employment, and ensuring fair treatment and equal opportunities for all citizens.

The covered topics (which range, as mentioned, from social security, the labour market, and competitiveness, to social inclusion) could certainly represent a good step in the right direction as regards the implementation of a number of the flexicurity principles illustrated above.

It is therefore important for us to emphasise how the spirit and text of the mentioned agreement must be also followed through – as already pointed out by ABI in the appropriate competent offices – in the ensuing legislative measures.

In effects, we have to emphasise how, on the whole, the measures on course for adoption at a legislative level seem incapable of representing, in their current state, sufficient action for the re-establishment of competitiveness because there are lingering uncertainties in the field of social security and incoherent interventions in the labour market.

4. BusinessEurope and ETUC's position on flexicurity

Recently the European social partners active in various sectors of production have dealt with, acting either individually or by joining forces, the major issue concerning new European policies and guidelines for work and social security including, by rights, flexicurity.

For this matter we take note of a joint analysis, submitted last October, which was drafted by BusinessEurope, UEAPME (the European Association of Craft, Small and Medium-Sized Enterprises), and CEEP (the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest) together with ETUC (the European Trade Union Confederation).

The weighty document, entitled "Key challenges facing European labour markets: a joint analysis of European social partners" tackles, with a wide ranging approach, the topic of the European labour market, starting from a macroeconomic analysis dense with tables, figures and statistics, continuing with the specific challenges that Europe will have to meet, and closing with a series of recommendations drawn up by the involved social partners.

The most 'statisic' analysis is basically subdivided into nine main areas (growth; employment, unemployment and productivity; demography; job creation; contract models; active labour policies; education, training and lifelong learning; social cohesion; mobility; additional elements of work quality) and offers an interesting cross section in terms of numbers and quality of what has been done (in 2005) and the relative trends for each single area.

Particularly interesting are figures relative to the constant creation of jobs at the EU-25 level (18.5 million jobs were created from 1995 to 2005), to contract types existing at the European level (in 2005 85% of contracts

were open-ended while 15% of contracts were fixed-term, 18.4% of which were part time), to training policies (approximately 9.7% of workers in the 27 country Europe participated, always in 2005, in education and training programmes).

Despite positive developments achieved in the last decade in European labour markets and policies, the mentioned social partners are of the opinion that these are still insufficient to ensure growth, productivity, employment and social development.

For this purpose the 'challenges' that will have to be dealt with in different areas have been illustrated and recommendations have been supplied to European institutions as regards: active policies for the economy and for employment; social protection, cohesion and inclusion; regulation of labour and industrial relations; flexicurity.

As for the topic of labour, the fundamental role of European social dialogue is once again re-established, especially where it supplies politics with decisive and effective contributions concerning employment conditions, social peace, wages and training. The above is even truer when placed in the context of globalisation and of remarkable changes in technology, production and society.

Even as regards flexicurity the independence of employers and of workers has been recognised as being decisive in the definition, through agreed actions, of the correct paths to follow in implementing the mixture of policies that address flexibility and security.

The common issues being debated substantially follow the guidelines provided in the EC Communication at hand (labour laws and contract arrangements; efficient and high quality labour markets; lifelong learning policies; efficient and sustainable social security systems; social dialogue) and, on the whole, re-establish that only a balanced and combined

approach to flexibility and security focused on elevating the 'quality of labour' can lead to economic and productive progress.

What has been stated up to now concerns – as noted – the common partisan guidelines of the mentioned European business associations and ETUC; then again, as regards flexicurity, both BusinessEurope and even ETUC drew up their own position papers aimed at furthering and illustrating their points of view to the European Commission.

In practice, BusinessEurope – in its paper dated 6 November 2007 – preliminarily emphasises how Europe is in need of urgent measures to allow companies and workers to adapt to the growing processes of globalisation and of swift technological evolution; for that matter the business association shares and supports the Community initiative which aims to correct the structural and market gaps in European labour.

In light of the above flexicurity should therefore comprise the following topics: flexible and reliable contract arrangements, accessible and high quality lifelong training, active and effective labour policies, employment-friendly social security systems.

The European Union should, consequently, simply supply the framework which each single Member state should implement according to its individual characteristics.

Lastly, the role played by social partners: BusinessEurope claims that they should be credited at all levels with the fundamental role played by the same in the context of the matter currently under debate.

To this end and at a European level BCESA aired its worries over the relation which may run between these framework agreements and collective bargaining at a national level, re-confirming to BusinessEurope the banking sector's autonomy in the European social debate process.

It is for this very reason that BCESA requested, including on occasion of formal encounters, greater coordination and exchange of information by BusinessEurope on the topics covered by cross-sector social dialogue.

Then again, ETUC, in its paper dated 6 October 2007, obviously defends different positions.

The European trade union objects to several points of the Commission's work in so far as, in substance, it believes that the communication mainly focuses on the cutting down of the fundamental rights of labourers, amongst which the latter's right to have stable jobs and secure contracts; ETUC believes that these represent the starting point when dealing with the concept of flexicurity and relative implementation policies.

ETUC's conclusions can be summed up as follows: there is a significant divergence between the Commission's 'vision' and that expressed by the trade union; therefore it is starting from this assumption that the (many) differences and the (few) convergences are detailed point by point.

5. Conclusions

A few closing remarks. ABI is of the opinion, for reasons that have been amply illustrated in the present paper, that the labour law must necessarily evolve towards more inclusive forms of job creation and greater respect of the fundamental rights of labourers, while doing away with those rigidities which still prevent us from fully developing productive forces and employment.

However this does not imply, as the Commission apparently seems to do, rooting for standardisation based on the minimum basic levels of the labour systems of the individual Member states.

In effects it is neither necessary nor convenient for us to have a standard labour law shared by the mentioned Member states, but the debate on flexicurity must act as a stimulus for Community institutions – including through the tool of European social dialogue – in order to promote the necessary change, reality by reality, country by country, following the guidelines that will inexorably have to promote flexibility and the creation of new jobs along with a suitable form of social security.

Rather, what needs to be strengthened is the possibility for European workers to enjoy true freedom of movement within the European common area, taking into account the current difference between tax and retirement treatments over which harmonisation seems to become ever more necessary.