

## SUBSIDIARITY/PROPORTIONALITY ASSESSMENT

### Subsidiarity Monitoring Unit

<b>Document number</b>	COM(2007) 359
<b>Title</b>	<i>Communication from the Commission Towards Common Principles of Flexicurity: More and better jobs through flexibility and security</i> <i>Nature of document:</i> non-legislative
<b>Date of adoption by Commission</b>	27.6.2007
<b>Drafting of opinion of COR</b>	Commission: ECOS Rapporteur: <b>Dave Quayle (UK/PES)</b>
<b>Treaty articles invoked</b>	None
<b>Detailed subsi check</b>	No

The Commission document submitted for analysis must be studied in the light of the Lisbon Strategy and the conclusions of the European Councils of 23-24 March 2006 and above all 8 March 2007 where the Commission was asked "*to explore the development of a set of common principles on flexicurity*". With this mandate, the Commission submits this Communication to **facilitate a debate** between EU institutions, Member States, social partners and other stakeholders, so that the European Council can adopt<sup>1</sup>, by the end of 2007, common principles on flexicurity which should then serve as inspiration and contribute to the implementation of the Integrated Guidelines for Growth and Jobs.

#### 1. Legal bases

As the document is a Communication, no legal basis is invoked. Nevertheless, **article 140 of the EC Treaty** (social policy) justifies the Communication of the Commission. According to this article, in order to achieve the objectives of article 136 about social policy, "*the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under this chapter, particularly in matters relating to: employment, labour law and working conditions, basic and advanced vocational training, social security, prevention of occupational accidents and diseases, occupational hygiene and the right of association and collective bargaining between employers and workers*". The same article says that to achieve this goal, the "*Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations (...)*"

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<sup>1</sup> Point 8(1) of the Communication on Flexicurity.

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Since the Communication implies coordination of all social policy<sup>2</sup> fields, including employment<sup>3</sup>, but also vocational training<sup>4</sup>, equal treatment of men and women<sup>5</sup>, and social inclusion, among others, the articles related to these policies have to be taken into consideration.

Considering that there are adequate legal bases in the Treaty to justify Community action, it is difficult to support the policy option preferred by the Commission outlined in the Impact Assessment. The CoR should not agree that the **open method of coordination** is the best alternative to achieve the objectives since it denies undeniably the role of the CoR and impedes the use of the normal decision-making procedures of the European Community (including CoR consultation, full EP involvement and representation of the interest of legislative regions within the Council). Moreover, as most regional and local authorities have officially no role in this intergovernmental method, their interests and/or competences are not necessarily respected.

In addition, the communication states that the open method of coordination should be based on article 127 of the EC Treaty which refers to employment policy. Nevertheless employment is only one component of a flexicurity approach and other policy fields as social policy, education (article 149), vocational training, equal opportunities and gender equality are an integral part of flexicurity policies (point 2 impact assessment).

It should be reminded that from the point of view of European governance the open method of coordination, even if in some cases it might lead to the positive effects, is not foreseen in the Treaties and is putting aside the Community method.

#### **Key point**

**The CoR could suggest to the Commission to refrain from taking reference to the open method of coordination (or to explain why the use of this non communitarian decision method is necessary) and to take any measures on the basis of treaty articles related to employment, social policy, education, vocational training, equal opportunities and gender equality, which are major issues of the flexicurity strategy.** Moreover, this would make reference to the legal basis and procedure specifically outlined in the Treaty. Hence, the European institutions and its consultative bodies will actively facilitate the enhancement of flexicurity principles in the related policy fields.

According to the treaties, the policies invoked in the communication are not exclusive competences of the European Community; hence the principles of subsidiarity and proportionality apply. Nevertheless, in the absence of any legislative measures, the analysis will restrict itself to putting

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<sup>2</sup> Articles 2, 3(1)(j), 136, 137 of the EC Treaty.

<sup>3</sup> Articles 3(1)(i), 125, 127 and 129 of the EC Treaty.

<sup>4</sup> Article 150 of the EC Treaty.

<sup>5</sup> Article 2, 3(2), 13, 137(1)(i) and 141 of the EC Treaty.

forward recommendations on measures currently in preparation, so that the Commission remains vigilant as regards respecting the principles of subsidiarity and proportionality.

## 2. Respect of the principle of subsidiarity

This Communication is generally justified and meets the criteria of Article 5 of the Protocol on the application of the principles of subsidiarity and proportionality:

- The issue has **transnational aspects** because of the mobility of workers and companies within the internal market.
- It is also accurate that "a lack of Community action would conflict with the **requirements of the Treaty**", since according to article 140 TEC (social policy), the "*Commission shall act (...) arranging consultations [...] in all social policy fields*" under chapter VIII, which covers the scope of the current Communication. On the basis of the Treaty, the Commission has a specific order from the European Councils<sup>6</sup> of March 2006 and 2007 to facilitate a debate about flexicurity, in order to adopt by the end of 2007 a set of common principles on this subject.

### Key point

Nevertheless it is essential to draw attention to the second subparagraph of **article 129 TEC (employment policy)**. Even though this article allows the Council to "*adopt incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment*", it specifically lays down that "**those measures shall not include harmonisation of the laws and regulations of the Member States**".

In this context, special attention should be paid to the second paragraph of point 7 of the Communication which could be implicitly describing harmonisation by imposing Member States how to proceed in order to have comparable unemployment benefits: "*In countries where a system of unemployment benefits is already in place and benefits are generous, the application of the right-and-duty principle should contribute to make the system cost effective. For countries where benefit systems are less developed, authorities may consider shifting public resources towards enhancing flexicurity policies and distribute any additional costs between different sources, through either increased taxation or social contributions.*"

The CoR could stress that the proposal of comparable unemployment benefits among all Member States must not lead to Community action aimed at the harmonisation of the laws and regulations of the Member States.

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<sup>6</sup> Article 4 TEU: "The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof".

### 3. Respect of the principle of proportionality

#### 3.1 A debate to set common principles in flexicurity.

The debate to facilitate a dialogue between the different partners should be suitable to achieve a regulatory framework respecting the principles on flexicurity. The role of the Commission is to organize the debate in an objective way showing all the possibilities that Member States could have when defining this framework.

#### **Key point**

The role of the Commission, which consists in promoting and facilitating the debate, can include the identification of matters to be discussed, for example those accompanying the secure transition from job to job. Nevertheless, it seems that the demand formulated in point 5(5) of the Communication that: *"Sufficient flexibility in recruitment and dismissal must be accompanied by secure transitions from job to job"* could be interpreted as if the Commission is going beyond its mandate because so far there is no consensus among member states on this point. The communication has to be the starting point for the debate but should not address specific demands for legislation to Member States particularly in fields where there is no political consensus yet.

#### 3.2 Scope for national and regional decision

For the rest, the Communication on flexicurity is in line with the Protocol on Subsidiarity and Proportionality given that it also leaves **scope for national decision**. As it is stressed in the point 5(3) of the Communication, there is not a one-size-for-all policy and that there should be common principles and different pathways adopted by Member States (which is in line with article 7 of the Protocol on Subsidiarity/Proportionality).

The Commission affirms in its impact assessment (point 3.3) that *"the concept of flexicurity includes an important (territorial) regional and trans-national dimension"* and that *"solutions to promote flexicurity thus need to be tailored to the different national and regional circumstances"*.

As the CoR has already expressed<sup>7</sup> as regards the implementation of the Lisbon Strategy, "greater attention [should] be paid to interaction between the various levels involved in implementation". That implies that local and regional authorities, as major employers in the EU, should have *"real opportunities to develop local and regional strategies"*<sup>8</sup>. Moreover, they have a significant potential on the conditions of access to the labour market *"for young people, women, immigrants and an ageing*

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<sup>7</sup> Opinion on the Mid-term review of the Lisbon Strategy CdR 152/2004 fin.  
[http://coropinions.cor.europa.eu/CORopinionDocument.aspx?identifier=cdR\comm.pol.eco%2Bsoc2002-06\dossiers\ecos-034\cdr152-2004\\_fin\\_ac.doc&language=EN](http://coropinions.cor.europa.eu/CORopinionDocument.aspx?identifier=cdR\comm.pol.eco%2Bsoc2002-06\dossiers\ecos-034\cdr152-2004_fin_ac.doc&language=EN).

<sup>8</sup> Opinion on the Mid-term review of the Lisbon Strategy CdR 152/2004 fin.  
[http://coropinions.cor.europa.eu/CORopinionDocument.aspx?identifier=cdR\comm.pol.eco%2Bsoc2002-06\dossiers\ecos-034\cdr152-2004\\_fin\\_ac.doc&language=EN](http://coropinions.cor.europa.eu/CORopinionDocument.aspx?identifier=cdR\comm.pol.eco%2Bsoc2002-06\dossiers\ecos-034\cdr152-2004_fin_ac.doc&language=EN).

population and on the promotion of labour market equality"<sup>9</sup>, support employment, and contribute to develop local and labour markets and job opportunities.

### **Key point**

On grounds of the proportionality principle the CoR could *support the approach taken by the European Commission proposing flexicurity pathways and urge that Member States design, in consultation with local and regional authorities, their own comprehensive pathway towards better combination of flexibility and security.*

#### 3.2.1 Social security

As lays down point 5(1) of the Communication, flexicurity involves among others, "*modern social security systems*". In some countries the legislation on social security systems or some of its aspects, is a regional and/or local competence. Therefore, the CoR should insist that the Commission *ensures that its services seek advice from these regional/local authorities when further regulating and establishing the pathways on flexicurity.*

#### **4. Cost of implementing the Communication/Financing**

The Commission underlines correctly in the Communication that various EU funding programmes (like the ESF, the European Regional Development Fund, etc) might contribute to the implementation of the employment policy criteria established by the Member States as a consequence of the EU action.

The CoR could *welcome the financial initiatives proposed by the Commission but it should be emphasized that community funds are additional and therefore, regional and local authorities must, in any case, make use of significant resources to implement this European policy.*

According to article 9(3) of the Protocol on Subsidiarity/Proportionality the Commission has to "*take duly into account the need for any burden...falling upon...local authorities.. to be minimised and proportionate to the objective to be achieved*" This burden might comprise financial and administrative components or any supplementary work for regional and local authorities. Even though the impact assessment affirms (point 5.2.2.6) that "*there would be no significant additional administrative cost either for the Commission or for Member States*", the Commission has not presented an accurate analysis concerning the impact and burden for local and regional authorities when putting in practice the set of common flexicurity principles.

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Opinion on the Communication on Modernising Social Protection for More and Better Jobs (CdR 2004/C and CdR 318/03) and Opinion on the Review of the European Employment Strategy and the Employment Guidelines for 2003(CdR 15/2003).

### **Key point**

The CoR could *highlight that the measures to achieve flexicurity will undeniably entail an **economic burden** for local and regional authorities as they are very often large employers and that an impact assessment of these costs would have been necessary according to the Protocol on Subsidiarity/Proportionality. Moreover, the lifelong learning strategies and investment in human resources, as well as the establishment of modern social security systems and unemployment benefits, will have considerable costs for the Member States and for local and regional authorities which so far have not been analysed neither.*

The CoR could *urge the European Commission to be vigilant to ensure that communitarian funding for implementing the flexicurity concept remains clearly visible at local and regional level and invite the Council of Ministers to ask Member states to make necessary resources available for the implementation of the flexicurity concept in the framework of national pathways..*

### Lifelong learning

The CoR has already noted<sup>10</sup> the importance of increasing the employment rate and lifelong learning. In the same opinion, the CoR supports these policies "but stresses that extra tasks must not be imposed on local and regional authorities without providing them with the necessary resources (...)".

*The Communication does not seem to consider how much the implementation of lifelong learning measures in the framework of flexicurity will cost for regional and local authorities. It presents "tax reductions" as a policy to stimulate individuals to invest in education. Nevertheless, this will not be the reality in poor regions and countries where individuals are likely to express priority for other concerns. Thus, the Communication should have presented a detailed analysis on the cost of implementing flexicurity principles in practice.*

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Opinion on the Integrated Guidelines for Growth and Jobs (2005-2008) (CdR 147/2005).