

The participation of stakeholders in the development of the European flexicurity concept¹

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1 Introduction

The term “flexicurity” has been at the heart of European level labour market discussions the past years. In the course of 2006 and 2007, the term has been further developed into a European policy concept, composed of clearly defined components, pathways, indicators and common principles (European Commission, 2006, 2007; European Council, 2007). The concept is part of the larger European employment agenda to create more and better jobs, and has been integrated in the renewed European Employment Strategy (EES) (European Commission, 2008). Much has been said and written about flexicurity, especially regarding the content of the concept, for instance if flexicurity really takes a balanced approach to flexibility and security (Keune en Jepsen, 2007). However, the process through which the European flexicurity concept has been designed, remains relatively unknown. A critical review of the flexicurity policy-making process is, nonetheless, for several reasons relevant (see e.g. Madsen, 2007). Both the theories on the preconditions for flexicurity and the more general theories on new governance acknowledge the importance of a well designed policy-making process, which for instance ensures the participation of stakeholders. A process which incorporates stakeholders, contributes to the likeliness of obtaining a balanced and integrated policy, something which is indispensable in the case of flexicurity.

Studies that focus on policy-making processes, especially in the field of European employment and social policies, mostly deal with the last stage of the policy-making process: the implementation of a policy and its impact in Member States (see e.g. Zeitlin et al., 2005). However, there is much less attention for the first stages of the policy-making process, in which policies are designed. This paper aims at filling this void by addressing the development of the flexicurity concept at the European level. The paper starts with a brief outline of theories addressing new governance and reflexive law, which provide a solid basis for the analysis of regulations, policies and practices. Then, the paper scrutinises Treaty regulations and European policies which address stakeholder participation, thus providing input on the design principles that the EU finds important. Subsequently, the paper sketches the actual flexicurity policy-making process, highlighting, among others, the contribution of stakeholders to the development of the flexicurity concept.

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2. Theoretical approaches to the participation of stakeholders

New governance theories describe a shift that has been taking place from classical modes of steering societies towards new governance methods (Kohler-Koch and Rittberger, 2006; Andronico and La Faro, 2005; Eberlein and Kerwer, 2004; Van Kersbergen and van Waarden, 2004). This shift originates from the awareness that the traditional hierarchical command-and-control regulations, which make use of top-down uniform rules and sanctions, can no longer give sufficient answers to problems in contemporary society. Societies are often diversified and deal with very complex issues, making it practically impossible to rule by uniform laws, designed solely at the highest levels (Lenoble, 2005; Scott and Trubek, 2002). This complexity and diversity is even larger when a complex issue like flexicurity is dealt with at the European level. The employment challenges and labour market traditions in Europe's 27 Member States differ widely, whereas the complexity of flexicurity ranges from its attempt to cover various policy fields, to unite social and economic goals, to its effort to create tailor-made solutions at decentral levels (compare Wilthagen and Tros, 2004; Bredgaard et al, 2007).

The EU has been using the new governance methods for quite some time. One new governance method is the Open Method of Coordination (OMC), used, among others, to carry out the EES (Scott and Trubek, 2002; Eberlein and Kerwer, 2004; Andronico and la Faro, 2005; Lenoble, 2005; Zeitlin et al, 2005). The flexicurity concept has been developed in the context of the EES (European Council, 2006). Since its inception in 1997, elements of the EES have been referring to the importance of a balance between flexibility and security. Over time, combining flexibility and security has become a much more prominent part of the EES, resulting in a separate guideline as of 2005 (Wilthagen et al., 2007). Currently, the term "flexicurity" is part of the explanatory texts of the renewed employment guidelines (European Commission, 2008). A common definition of flexicurity is: *"a policy strategy that attempts, synchronically and in a deliberate way, to enhance the flexibility of labour markets, the work organisation and labour relations on the one hand, and to enhance security – employment security and social security – notably for weaker groups in and outside the labour market on the other hand"* (Wilthagen and Tros, 2004, p. 169).

A number of characteristics contribute to the larger effectiveness of new governance. One of these is the participation of a broad range of stakeholders in the policy-making process (Mosher and Trubek, 2003; Pochet, 2003; Eberlein and Kerwer, 2004; De la Porte, 2007). This means for instance that not only governmental stakeholders may participate, but also decentral stakeholders, like the social partners and civil society organisations (Scott and Trubek, 2002; Van Kersbergen and van Waarden, 2004). Ideally, these stakeholders operate in non-hierarchical settings, meaning that a governmental stakeholder, if involved at all, is merely one stakeholder among many (Van Kersbergen and van Waarden, 2004). In this research, decentral stakeholders are foremost the stakeholders that take part in the flexicurity debate at the European level. This might contradict the ideas of some theoretical streams of new governance that emphasise 'local' participation in the sense of the individual participation by citizens or involvement of national organisations and stakeholders (see also Smismans, 2005; 2006). However, European-level stakeholders might also qualify as decentral stakeholders, for reasons of the absence of a top-down implementation of regulations and policies by the Commission and the Council (Smismans, 2006). Such decentral actors are the European trade unions, the European

employers' associations, European civil society organisations and European Institutions (excluding the Commission and the Council). In addition, this research takes into account the inclusion of individual experts in the policy-making process.

The inclusion of stakeholders in the policy-making process should, moreover, start at an early stage, meaning that they should participate already in the formation phases of policy-making process (De la Porte and Nanz, 2004). Only then, at that phase, stakeholders may genuinely have an influence in the design of a policy. Moreover, early participation makes sure that the process can benefit from the input of local knowledge and a wide variety of opinions, even in the phases in which the exact problem is still defined and alternative solutions are gathered (Papadopoulos and Warin, 2007). Concerning flexicurity, the early start of negotiations is also emphasised (Madsen, 2007). Especially social dialogue seems indispensable for developing flexicurity (Cazes, 2008; Jørgensen 2008; Madsen, 2007; Wilthagen and Tros, 2004). Stakeholder inclusion, moreover, offers the ability to integrate several policy fields, for instance employment and social policies.

By allowing for a broad participation of stakeholders in the policy-making process, stakeholders get the opportunity to engage in an exchange of ideas, opinions, and goals. This exchange may lead to a joint understanding about the problems that should be solved and the best solutions to deal with these problems. The inclusion of stakeholders and the integration of different policy fields may contribute to the support for a policy and thus eventually positively influence its effectiveness. This is especially the case if a common understanding between the stakeholders has been successfully created. For flexicurity, the involvement of social and economic stakeholders in creating the concept might help to bridge the different viewpoints and goals, thus resulting in a genuinely balanced and integrated concept. The ability of the stakeholders to agree on flexibility and security may very well be regarded as one of the preconditions for flexicurity (Wilthagen and Tros, 2004; Madsen, 2007; Jørgensen, 2008; Bredgaard, Larsen, et al., 2007).

2.1 The new role of law

As such, the new governance and flexicurity literature emphasise the need to create policies at decentral levels, thus benefitting from local knowledge, but also allowing for tailor-made solutions rather than a central, uniform policy. This might suit a broad and complex concept like flexicurity, especially when it is created at the European level. These considerations, however, lead to questions like how to make sure that a policy-making process is designed well, or how the participation of the relevant stakeholders can be supported and facilitated. Both in literature on new governance and in literature on the preconditions for flexicurity, the role of law is often emphasised. For one, law can facilitate the participation of stakeholders by creating regulations on the inclusion of stakeholders in the design of policies or laws. This idea is for instance developed in theories of reflexive law, in which law, in order to increase its effectiveness, deliberately enables other subsystems (like the economic or the social subsystems) to be self-regulatory (Smismans, 2005; Lenoble, 2005; Rogowski and Wilthagen, 1994). Smismans (2005) adds that the legal subsystem thus creates the ability to take into account contextuality. In practice, illustrations of this function of law are for example regulations that allow social partners to deal with a subject autonomously. Concerning flexicurity, scholars argue for the central coordination of decentralisation and for the creation of platforms for coordination, consultation, and negotiation (Wilthagen and Tros, 2004). Another role of law is to

provide a modern social security system, which is one of the elements of a national flexicurity strategy (European Commission, 2007).

2.2 Objects and sources of study

To analyse the flexicurity policy-making process, this research first scrutinises European law and policies concerning the inclusion of stakeholders in the process of creating employment and social policies. EU Treaty provisions have been analysed on the role of stakeholder in making policies and regulations in employment and social issues, including the stage of the policy process in which the stakeholders should participate. Smismans (2005, 2006) analyses in this respect the Employment policy regulations in the Treaty. This paper briefly repeats this exercise, but also adds the Treaty provisions concerning social policy to the analysis. The reason for this broader approach is the relevance of social policy in the flexicurity debate and the flexicurity concept. Moreover, not only Treaty regulations are analysed, but also European policies that address the participation of stakeholders, as these are part of the institutional context as well.² Since the year 2000, a large number of Communications have been published that address the need for more participation of stakeholders in the design of European policies. From this pile of EU documents with criteria and principles for the design and implementation of policies, the most relevant have been selected for further analysis. These are the White Paper on European Governance; the Minimum Standards for Consultation; the Principles and Guidelines on the Collection and Use of Expert Advice and the Communication on the Dialogue with Associations of Regional and Local Authorities. This list of documents may not be exhaustive, but it contains the most relevant documents for the flexicurity debate.

Second, an analysis of the actual flexicurity design process will reveal the extent to which stakeholders participated at the different stages of the process. Moreover, the analysis takes account of the extent to which stakeholders have been consulted simultaneously, meaning if stakeholders could directly debate flexicurity with each other, thus creating the possibility for an exchange of views. Moreover, the research establishes whether there was a core policy community consisting of a closed group (insiders) that contributed to the process, or if there was an open and broader policy network that contributed to the creation of flexicurity (de la Porte, 2007). The analysis of the process is based on opinions, Communications, press releases, and all other relevant documents addressing the input from various stakeholders.

The strong focus on stakeholder participation means that the paper does not pay much attention to the content of the flexicurity concept. The analysis of the process covers the whole official period of the design of the flexicurity concept, starting from the first informal European discussions on flexicurity under the Austrian Presidency early 2006, and ending with the endorsement of the common principles of flexicurity by the Council in December 2007. But we will first turn to the legal and policy principles concerning the design of a policy-making process.

3 Legal sources and policy documents addressing participation

3.1 Employment issues

² This may divert from Smismans' theory for the reason that reflexive *law* may only be applicable to regulations in law and not to policies. However, in this paper policies are regarded as part of the institutional framework of 'rules'.

At several places, the European Treaty deals with criteria for shaping policy-making and regulation-making processes. These regulate which steps should be taken in the decision-making process, but they also give limits to the possibilities for Community interference. Concerning employment, Title VIII of the Treaty regulates the participation of stakeholders (see also Smismans, 2005; 2006). Article 128 states that on the basis of the conclusions of the European Council, the Council, acting on a proposal from the Commission and after consulting the European Parliament (EP), the Economic and Social Committee (EESC), the Committee of the Regions (CoR) and the Employment Committee (EMCO) shall each year draw up guidelines. The Member States shall take these into account in their employment policies. Thus, the Article mentions a number of European Institutions that should be consulted before the final drafting of the employment guidelines. Via these European Institutions other stakeholders might indirectly influence the formulation of the employment guidelines (cf Smismans, 2005). EMCO for instance consists of two members of each Member State and two members of the Commission (see Article 130). Among EMCO's tasks are the monitoring of the employment situation of each Member State and the Community as well as their employment policies. Moreover, EMCO may formulate opinions³ both on its own initiative and at the request of either the Council or the Commission. EMCO can also contribute to the preparation of the Council proceedings regarding the formulation of employment guidelines (Article 128). Important to note is that EMCO has to consult management and labour, as part of the fulfilment of its mandate. However, the article does not state at what stage of the decision-making process management and labour should be consulted, nor does it say which parties or how many parties to consult i.e. all or just one of the representatives of management or labour (cf Barnard, 2000). However, in theory, this Treaty formulation opens up the policy-making process for all social partner organisations. At the same time, mentioning only management and labour, excludes other parties that may have an interest in employment policies, such as the NGOs. Moreover, the participation of stakeholders should not per se happen simultaneously, at least not according to the Treaty. Therefore this Treaty regulation does not necessarily lead to an exchange of views between management and labour. However, exchange between Member States may occur, as well as between Member States and EMCO, EMCO and Commission officials, EMCO and management and EMCO and labour.

Article 257 mentions the role of the Economic and Social Committee (EESC), which has an advisory status. Its members consist of “*representatives of the various economic and social components of organised civil society, and in particular representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations, consumers and the general interest*” (Article 257). The EESC thus serves as a voice of the national civil society. Its members are independent, they must serve the interests of the Community and are not bound by any mandatory instructions. The Committee of Regions (CoR) also has an advisory role and consists of “*representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly*” (Article 263). According to Article 265, the Council and Commission not only has to consult the CoR according to the requirements of other Treaty regulations, but also “*in all other cases, in particular those which concern cross-border cooperation, in which one of these two institutions considers it appropriate.*” The CoR can also issue an opinion on its own initiative, whenever it

³ Without prejudice to Article 207, that deals with the preparatory tasks for the Council, by the Permanent Representatives.

feels that regional interests are involved. Moreover, the European Parliament (EP) can consult the CoR.

3.2 Social policy issues

Apart from the Employment Title, Title XI on Social Policy, Education, Vocational Training and Youth, frequently mentions the term employment. For several reasons it is relevant for the flexicurity discussion to look at the social policy regulations. First, the term flexicurity integrates the terms flexibility and security. In the European definition of flexicurity, social security, learning, and training are relevant aspects of flexicurity strategies. Such aspects of flexicurity are part of the components of flexicurity as formulated by the European Commission (European Commission, 2007). A second argument to include social policy regulations in the analysis is the role of the Social Protection Committee (SPC; see Article 144) in the flexicurity debate. This Committee has an advisory function in the promotion of the cooperation between Member States and the Commission in the social field. Among its tasks are the monitoring and information exchange regarding developments in social protection. The SPC may be seen as the counterpart of EMCO, however, dealing with social policies instead of employment issues. In accordance with its mandate the SCP also needs to “... *establish appropriate contacts with management and labour*”. This formulation is much less far-reaching than the consultation requirements that EMCO has regarding management and labour. The members of the SPC consist of two persons of each Member State and two persons from the Commission. Thus, SPC may trigger an exchange between Member States, between SPC and Member States, SPC and the Commission, SPC and labour and SPC and management.

Article 138 contains real consultative regulations, addressing that the Commission shall have the promotion of the consultation of management and labour at the EU level, as one of its tasks. It shall take “... *any relevant measure to facilitate their dialogue by ensuring balanced support for the parties*”. One of the instructions is therefore that the Commission shall consult management and labour on the proposed directions of the Commission in the field of social policy. This consultation should take place before submitting proposals. After this consultation, when the Commission and Council have decided that action is indeed required, management and labour have to be consulted again about the content of the proposal. Management and labour may then forward an opinion or a recommendation to the Commission. The inclusion of management and labour in making social policy, is much more direct than in employment policies, where management and labour are consulted mainly via EMCO, at least this is the formulation in the Treaty articles. Moreover, concerning social policies, it is clear that this consultation should take place rather early on, before the submission of proposals. In addition, the article addresses the dialogue between management and labour, enabling direct interaction between both sides of industry. This dialogue between management and labour is also the subject of Article 139, which gives more rights to the social partners. If management and labour so desire, they can decide to turn the results of their dialogue into contractual arrangements. Such agreements can be implemented either conform the procedures and practices specific to the Member States or, (in matters covered by Article 137) at the request of the bargaining parties by a Council decision based on a Commission proposal. The ability of the social partners to make such contractual arrangements is to some extent a form of new governance as well (compare Smismans, 2006; Scott and Trubek, 2002).

4 Policy documents on stakeholder participation

In a number of Communications, the Commission addresses European policy-making processes, including criteria on how to design such processes and what stakeholders to include. These documents are generally much more detailed in their explanations of the extent of the involvement of stakeholders. This section analyses a number of these Communications.

4.1 Documents calling for broad stakeholder participation

The Commission decided to start with the reform of European governance before the Nice European Council, early 2000. One of the first publications on this objective was the White Paper on European Governance (July 2001).⁴ The reason for developing a new governance method stemmed firstly from the challenge to give guidance to societies that do not necessarily accept top-down decisions. Second, it was an attempt to strengthen the method for finding effective, tailor-made solution to complex problems. The participation and cooperation of a range of stakeholders like the social partners, regional and local authorities, civil society⁵, and other relevant parties, was seen as a key to the success of new governance. The White Paper on European Governance introduced the new governance method and the principles of good governance. It aimed at opening up the policy-making process and ‘... to get more people and organisations involved in shaping and delivering EU policy’,⁶ thus incorporating a broad range of stakeholders at the various stages of the policy-making process.

The whole policy process as developed in the White Paper has to meet certain standards. The Commission calls them the principles of good governance. These principles are openness, participation, accountability, effectiveness, and coherence. They jointly contribute, according to the Commission, to a more democratic governance method, they apply to all the different levels that exist within the EU, and they can meet the challenges posed by the changing world and the gap between the EU and its citizens. The aim seems to have a quite open inclusion of stakeholders, not necessarily limited to organisations representing labour or management. This aim is further developed in the communication on ‘General principles and minimum standards for consultation of interested partners’.⁷ There are five minimum standards for consultation, the second of which deals with the consultation of target groups. When classifying the target groups for a certain consultation process, the Commission should ‘... ensure that relevant parties have an opportunity to express their opinions.’⁸ These relevant groups may be those that are affected by the policy, that are somehow part of the implementation process or that have goals which are directly related to the policy. However, in determining who the relevant parties are, the Commission should also bear in mind the wider impact of the policy, for instance the

⁴ European Commission (2001), *European Governance. A white paper, COM(2001) 428 final*.

⁵ Civil society includes, according to the White Paper, the trade unions and employers’ associations; the NGOs, professional associations, charities, grass-root organisations, and ‘organisations that involve citizens in local and municipal life with a particular contribution from churches and religious communities (European Commission, 2001: 14).

⁶ European Commission, 2001: 3

⁷ European Commission (2002), *General principles and minimum standards for consultation of interested partners*.

⁸ European Commission (2002), *General principles and minimum standards for consultation of interested partners*.

impact in other policy areas; the need for specific experience or knowledge; the need to include NGOs; the need for a proper balance of interests, such as between economic and social bodies, but also between small and large organisations; and the need to include wider constituencies and/or specific target groups such as the young, or the poor. According to the Commission, the inclusion of other parties will offer the possibility to learn from the perspective of the others. However, a second advantage of such participatory trajectories is that the stakeholders will learn more about the complex political framework in which the Commission operates, including the obligations towards other Institutions and the constraints posed by its international obligations. As such, the exchange of views also works the other way around.⁹ In the case *'a formal or structured consultation body exists, the Commission should take steps to ensure that its composition properly reflects the sector it represents.'* If this is not the case, the Commission should find ways to make sure that the interests of all parties are taken into account (e.g. through other forms of consultation). There are also thoughts on how to organise the interaction with or between stakeholders. One suggestion is to organise this through the EP, as the EP consists of elected members by European citizens. Another option is, according to the Commission, the use of advisory bodies like the CoR and the EESC. However, there may also be less formalised contact with diverse parties. Direct, broad and open forms of participation is thus the aim of these Communications, among others, aiming at the interaction of and exchange between stakeholders.

4.2 Documents addressing the participation of particular stakeholders

A communication which devotes its attention to more specific stakeholders, is the communication containing the principles for expert advice.¹⁰ It complements the minimum standards of consultation, because of its focus at non-public consultation. Following the principles of good governance, the Commission should seek advice of an appropriately high quality, be open in seeking and acting on advice from experts, and ensure that its methods for collecting and using expert advice are effective. The principles and guidelines apply to all stages of the policy-making process by the Commission. The Commission may make use of the expertise of internal experts (experts within the Commission itself) or external experts. These external experts can be academics, people with practical knowledge, or people who have direct stakes in the policy issues. This form of participation is not open to any stakeholder, although people should have the feeling that the request for expert advice is legitimate.

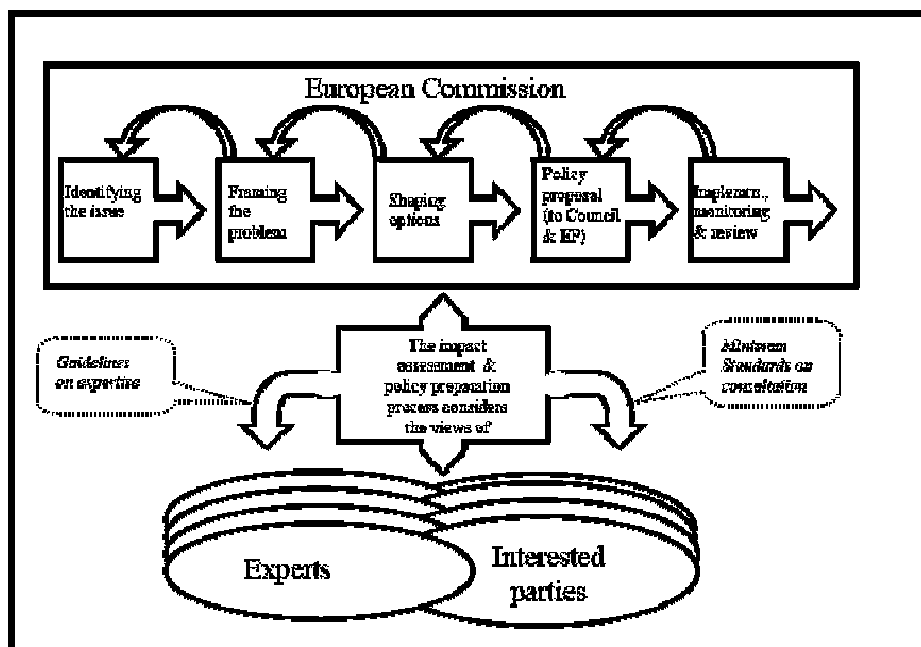
The core principles apply whenever the Commission seeks for advice outside the responsible department, and adheres both to ad hoc advice and permanent expert groups. Although the principles of expert advice in theory concerns the consultation of a distinct group of experts, the principles may in some cases be in conflict with the minimum standards of consultation. In such cases, the Commission will provide the external parties with detailed guidance. In order to make the distinction clearer, the Commission has drawn the following picture. The picture also describes the different stages of the policy-making process, thus describing each party's influence in the subsequent stages of the policy-making process. It shows that according to the

⁹ European Commission, 2002:18

¹⁰ European Commission (2002b), Communication from the Commission on the Collection and Use of Expertise by the Commission: Principles and Guidelines; "Improving the knowledge base for better policies", COM(2002) 713 final

principles experts come into the decision-making process at an earlier stage than interested parties. However, in reality this might be different.

Figure 1: Consultation by the Commission of experts and interested parties according to the stage in the policy cycle.



Source: European Commission (COM (2002) 713 final, page 8)

At the end of 2003, the Commission issued a communication addressing the dialogue with regional and local associations, thus establishing a more detailed view on “a more systematic dialogue with European and national associations of regional and local government at an early stage of policy shaping”.¹¹ In general, the dialogue will have to start prior to the formal decision-making process and may include the topic of ‘employment’. The CoR is presented as an important body to further facilitate and strengthen this dialogue. The CoR is the prime selector of organisations that should take part in the dialogue, although the Commission reserves itself the right to invite additional organisations or associations. These must be concerned by the policy in question, have members which are involved in implementing the policy and which have a direct interest in the policy.¹² Thus, the CoR and the Commission can, in theory, exchange views at a very early stage in the policy-making process. In the next section, the actual flexicurity policy-making process is described. The example of the flexicurity policy-making process gives more insight in the early involvement of stakeholders and the extent to which they were able to exchange views.

¹¹ European Commission (2002a), *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission*, COM (2002) 704(01), p.14.

¹² European Commission, 2003: 6-7; COM(2003)811.

5. Stakeholder participation in the design of flexicurity: Phase 1 January – June 2006

This paper takes the Austrian Presidency as the starting-point of the development of the flexicurity concept at the European level. Austria placed flexicurity on the agenda of an informal meeting of European Ministers of Employment, Social Policy, Health and Consumer Affairs early 2006. Barely 2 years later, at the end of 2007, the Council adopted common principles of flexicurity. In this relatively short time span the idea of flexicurity was developed and discussed with a wide range of stakeholders. In this section this process will be described. Figure 2 illustrates the time line of the flexicurity design process.

Participation by European Institutions

At this first stage of the flexicurity discussion, a large number of activities aimed at putting flexicurity at the agenda and to start defining the concept. At this stage, the Commission spoke with some stakeholders. A first occasion for discussions was the informal meeting of the Employment and Social Ministers (EPSCO) in Villach, at 19-21 January 2006. Flexicurity was the key topic in the section on employment issues.¹³ At this occasion a Danish academic expert held a presentation called "Flexicurity – a new perspective on labour markets and welfare states in Europe". Another topic for discussion was the compatibility of the European Social Model with European competitiveness. Moreover, national practices were exchanged as well as the options for common European policies and fields of action.¹⁴

In these two days of meetings, the EPSCO Council also discussed issues with the Troika¹⁵, the European Social Partners¹⁶ and the Platform of Social NGOs (Social Platform). At the press conference following day one, all these parties seemed very pleased with the fact that flexicurity had appeared on the European agenda.¹⁷ At this stage of the flexicurity policy-making process, the participants did not yet have a very specific idea of what flexicurity entailed. This was of course due to the fact that the debate on flexicurity had just started and, as was also explained at the press conference, the specific setting in which the discussions took place: an informal meeting held to share ideas. Still, there was a consensus between the Troika, the European Social Partners and the Social Platform on the need for social security to meet the goals of economic growth and more employment. Austria seemed determined to develop these issues in an integrative manner.¹⁸ A second item on which the participants agreed, was the fact that partnership requires many actors, some of which had attended that days' meeting.

¹³ Title: "FLEXICURITY – Flexibility through Security. For a SOCIAL EUROPE". Event site: http://www.eu2006.at/en/Meetings_Calendar/Dates/January/1901BESO.html?null

¹⁴ EU Presidency, (2006), Informal meeting of the Ministers for Employment and Social Affairs, Villach, 19-21 January 2006, Press release, at website www.eu2006.bmsg.gv.at

¹⁵ Officials from the national government that has the Presidency of the European Union and the subsequent two Presidencies.

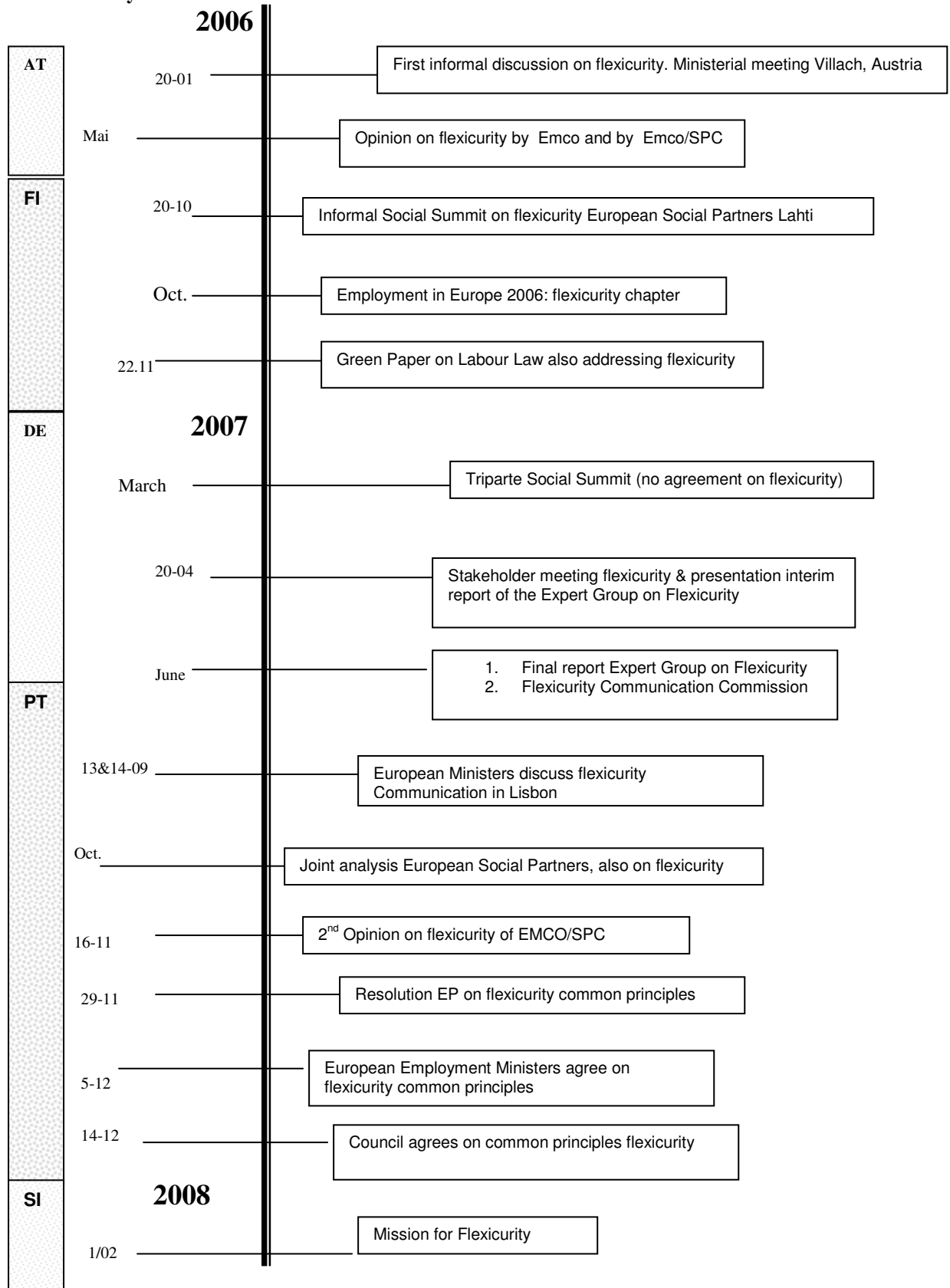
¹⁶ At the press conference 19 January 2006 social partner representatives from trade union ETUC and employers' association UNICE (now BusinessEurope) were present.

¹⁷ Informal Meeting of Employment and Social Affairs Ministers, 19-20 January, Villach: Press conference of 19 January at 16:30: http://www.eu2006.at/en/Media_Service/videoarchiv/index.html

¹⁸ Press conference Austrian Presidency, see footnote 17.

Figure 2: European flexicurity time line

EU Presidency



After the informal Council meeting, EMCO created a working group on flexicurity, consisting of Denmark, Belgium, Czech Republic, Germany, Spain, Italy, Austria, Sweden, the Slovak Republic, Slovenia and Commission officials.¹⁹ This EMCO group published a report on flexicurity in May 2006. Moreover, EMCO held a meeting on flexicurity in Bad Ischl at 8-10 February 2006. Bartenstein, at that time Economics and Labour Minister of Austria, gave a speech, in which he said that the EMCO meeting was organised at the request of the Austrian Presidency. Austria was determined to anchor the flexicurity concept in the conclusions of the subsequent Spring European Council.²⁰ Bartenstein emphasised the important role of the European Social Partners in developing flexicurity and said that they should be involved in the European decision-making process at the right time. At the EMCO meeting, various case studies were presented from Austria, Poland and Norway. Moreover a Dutch academic expert gave a presentation on flexicurity.

The Austrian Presidency succeeded in getting flexicurity in the Presidency conclusions of March 2006.²¹ In these conclusions, the Council asked the Member States to pay special attention to flexicurity in the context of improving the adaptability of workers and enterprises as valued in the EES. Moreover, it assigned a task to the Commission to explore the development of a set of common principles on flexicurity, in joint cooperation with the Member States and the Social Partners.

Other Directorates General (DGs) were also active in discussing and shaping the flexicurity concept. DG Economic and Financial Affairs (ECFIN) produced a paper on flexicurity, based on which the ECOFIN Council discussed flexicurity in March 2006. The discussion leader was the Danish Finance Minister. Also the Labour Market Working Group, a subgroup of the Economic Policy Committee (EPC), discussed flexicurity.²²

Very early in the debate the SPC and EMCO published an opinion on flexicurity, they did so separately, but also in a joint opinion. The fact that both these European Institutions came with an opinion on flexicurity so early on in the policy-making process, signals that they regarded flexicurity as an important topic both from the employment perspective (EMCO) and from the social issues perspective (SPC). EMCO's flexicurity contribution was written on the invitation of the Austrian Presidency and served as a preparation for the EPSCO Council in June 2006.²³ The document was prepared in a special working group. The flexicurity report itself was an analytical report and seen by EMCO as a means to fuel the discussion on flexicurity inside EMCO, the Council, the Social Partners, the Member States and the Commission, for EMCO realised that finding common grounds on flexicurity requires

¹⁹ European Commission, Brussels, 27.6.2007, SEC(2007) 861, Commission staff working document *Accompanying the Communication Towards Common Principles of Flexicurity: More and better jobs through flexibility and security, Impact Assessment*, {COM(2007) 359 final}, {SEC(2007) 862}.

²⁰ Bartenstein: Flexicurity concept to be gradually determined, 09.02.2006, Press release, http://www.eu2006.at/en/News/Press_Releases/February/0902bartenstein.html

²¹ European Council (2006), Brussels European Council, 23/24 March 2006, Presidency conclusions, 7775/1/06; REV 1; Concl 1.

²² Impact Assessment, footnote 15

²³ EMCO opinion: EMCO Working Group Report on Flexicurity

http://ec.europa.eu/employment_social/employment_strategy/pdf/emco_workgroupflexicurity06_en.pdf

a broad consensus-building process. Moreover, the contribution served as a basis for the joint contribution of EMCO and SPC on flexicurity.

Also the joint contribution of EMCO and SPC emphasised the relevance to at least consider the contribution of different stakeholders in flexicurity, especially the role of the Social Partners. The participation of stakeholders was foreseen in a number of ways. For one, in the plan of the Commission to publish a Green Paper on Labour Law, aiming at triggering a discussion among those interested. Second, the Commission's plan to analyse flexicurity aspects in the context of the Annual Progress Reports of Member States and to adopt a Communication on a set of common principles in 2007, in all of which the Member States and Social Partners would fully participate. Third, the intention of the Finnish Presidency to hold a discussion on flexicurity in an extraordinary Tripartite Social Summit in the autumn of 2006.²⁴ The EPSCO Council of 1-2 June 2006 endorsed the joint contribution of EMCO and SPC on flexicurity.

At 18 May 2006, Špidla, European Commissioner for Employment, Social Affairs and Equal Opportunities, hosted a seminar on flexicurity with three experts. This seminar was attended by over 60 officials from DG Employment, Social Affairs and Equal Opportunities (EMPL), the Secretariat-General (SG), ECFIN, Education and Culture (EAC) and DG Enterprise and Industry (ENTR). The goal of the seminar, sensitizing DG EMPL staff to the concept, its dynamics and the role of the EU, had been achieved.²⁵ The experts that spoke at this event were researchers from Portugal, Denmark, and France.²⁶ In the process of making the communication, which was scheduled to come out in June 2007, DG EMPL intended to have regular consultation with and involvement of other DGs: the Lisbon DGs including ECFIN and ENTR.²⁷ Meanwhile, Commission officials gave speeches on flexicurity at several occasions, emphasising the relevance of the discussion to a.o. the EESC²⁸, the Tripartite Social Summit with the social partners²⁹, the Social Platform³⁰ and to the sectoral social dialogue³¹. The EESC adopted an opinion on "Flexicurity: the case of Denmark" in May 2006.

The participation by the European Social Partners

Also the European Social Partners, in this context especially trade union organisation ETUC and employers' associations BusinessEurope (UNICE), UEAPME (small and medium sized companies) and CEEP (public organisations), were early on involved in the flexicurity debate. Balancing flexibility and security was not an entirely new

²⁴ EMCO and SPC, Flexicurity, Joint Contribution of the Employment Committee and the Social Protection Committee, 12 May 2006 (final).

²⁵ EUROPEAN COMMISSION (Employment, Social Affairs and Equal Opportunities DG Employment, Lisbon Strategy, International Affairs Unit D2 Employment Strategy, CSR, Local development), Summary Note Flexicurity Seminar held on May 18th, 2006, Brussels, June 14th, 2006, JK/ib - Ad.D/11693.

²⁶ Impact Assessment, footnote 15

²⁷ Impact Assessment, footnote 15

²⁸ Speech by Mr Vladimir Špidla, Plenary session of the European Economic and Social Committee, Brussels, 21 April 2006

²⁹ Speech by Vladimir Špidla, 23 March 2006.

³⁰ Discours du Commissaire Špidla, A la réunion semestrielle de la Plate-forme Sociale Bruxelles, 16 mars 2006.

³¹ Vladimir Špidla, Closing speech at the First sectoral social dialogue conference, Brussels - 13-03-2006.

subject for them.³² They already placed the balance between flexibility and security on the agenda in their work programme 2006-2008³³, and presented at the Tripartite Social Summit at 23 March 2006. In this Work Programme, the European Social Partners announced that they would make a joint analysis on a number of labour market issues, one of which was the balance between flexibility and security. The negotiations on flexicurity ran parallel to the process of the Commission to further develop flexicurity. One of the platforms which hosted discussions on flexicurity was the Social Dialogue Committee (SDC). This platform, which was set up in 1992, is the main body for bipartite social dialogue at the European level. It holds 3 to 4 meetings per year and consists of 32 employers and 32 workers representatives, either from the European or from the national level.³⁴ The draft work programme of the social partners was discussed in the SDC in January 2006.³⁵ Špidla welcomed this work programme, mentioning that it was in line with the Commission's priorities. The Commission itself met with the SDC in June 2006 (also the EMCO President was there) and February 2007 to discuss flexicurity and to inform the parties about the concept.³⁶

The sectoral social partners also played a role in developing flexicurity. They were invited by the Commission to make their own contributions. To give input to this debate, the Commission held presentations at several meetings of sectoral dialogue committees.³⁷

6. Phase 2: June-December 2006

Participation by the European Institutions

In the second half of 2006, under the Finnish Presidency, EMCO worked on further fine-tuning the flexicurity concept. For one, the Cambridge review 2006 was carried out based on the (draft) National Reform Programmes of Member States and some informal country visits. The emphasis in these examinations was on three themes: People at the margins of the labour market, Flexicurity, and Lifelong learning for older workers.³⁸ Furthermore, the Commission published in its volume "Employment in Europe 2006" a chapter on flexicurity in which it defined flexicurity and showed country-scores based on statistical indicators. In November 2006, EMCO produced a background document and used this as a basis for a contribution to the EPSCO Council.

Participation by internal and/or external experts

At this stage the Commission established groups for internal and external expert advice. To structure internal expert advice, two groups were created to consult on both the process and the content of the flexicurity concept: an internal DG EMPL

³² Also ETUI, a research institute related to ETUC, made a special issue on flexicurity in 2004.

³³ http://ec.europa.eu/employment_social/news/2006/mar/work_programme_2006_2008_en.pdf

³⁴ Website DG Employment, Social Affairs and Equal Opportunities, Cross Industry Social Dialogue, http://ec.europa.eu/employment_social/social_dialogue/interprof_en.htm, consulted on March 10, 2009.

³⁵ Social Dialogue Committee, Agenda for the meeting of 25 June 2006.

³⁶ Social Dialogue Committee, Agenda for the meeting 6 February 2007 and of 28 June 2006.

³⁷ Impact Assessment, footnote 15

³⁸ The Employment Committee, Report of the EMCO Ad Hoc Group on the outcome the Cambridge Review country examination of the employment sections of the NRPs for 2006, EMCO/21/131106/EN-final.

working group and an Inter-service Steering Group. The internal group within DG EMPL brought together the policy and geographic directorates. The Inter-service Steering Group, led by DG EMPL, consisted of representatives from SG, DG ECFIN, DG ENTR, DG EAC, DG Internal Market and Services (MARKT), and the Bureau of European Policy Advisers (BEPA).³⁹

In July/September 2006 an Expert Group on flexicurity, consisting of external experts was established by DG EMPL. The experts in the group were chosen on the basis of their academic record. The experts came from France, Italy, the Netherlands, Hungary, and Croatia. Moreover, two other experts who were affiliated to the social partners, were advisors in the group.⁴⁰ The main task of the group was to review relevant academic literature and practices in Member States and to advise the Commission on preconditions for flexicurity, various starting positions and flexicurity pathways, i.e. giving analytical input to the flexicurity discussion.⁴¹ DG EMPL chaired the group and a Dutch academic was the rapporteur. The Expert group mentioned in its final report that it benefited from the presentations and discussions at an Flexicurity Stakeholders Conference, organised by the European Commission in Brussels on 20 April 2007. At this event, which will be described later on in this paper, an interim report of the expert group was presented. At the meetings of this expert group, sometimes members of the internal Inter-service Steering groups were present.

Participation by the European Social Partners

In 2006 and 2007, the European Social Partners autonomously bargained about a joint labour market analysis in which flexicurity was one of the themes. At the Informal Social Summit in Lahti in October 2006, the European Social Partners addressed flexicurity. At these Summits also the European Commission and the Troika were present. The purpose of the meeting was to underline the key role of social partners in enhancing the competitiveness of Europe. The focus was on the management of change in Europe and on seeking ways to establish a new balance between flexibility and security at the labour market (“flexicurity”). The participation of social partners was coordinated by ETUC and BusinessEurope (UNICE). Špidla also gave a presentation at the meeting. At the press conference after the meeting, the social partner representatives seemed fairly positive about flexicurity. At least there was an agreement that flexicurity was an important concept which needed to be further discussed and developed. ETUC said that it took flexicurity very serious, and hoped that flexicurity could offer a more stable way forward in times of change. BusinessEurope (UNICE) mentioned that the discussions on flexicurity were useful and interesting and regarded flexicurity as an important way to break away from the negative trade-off between creating more jobs or increasing productivity in which a lot of European countries seemed to be trapped. The press releases and the press conference showed that the flexicurity-discussion among the social partners was still in the starting phase at that point in time. However, all parties seemed willing to further explore the subject.

³⁹ Impact Assessment, footnote 19

⁴⁰ European Expert Group on Flexicurity (2007), *Flexicurity Pathways Turning hurdles into stepping stones*, Brussels, June 2007.

⁴¹ Impact Assessment, footnote 19

Open consultation: Green Paper on Labour Law

At the end of 2006, the Commission started an open and broad consultation on labour law, by publishing a Green Paper on the Modernisation of Labour Law.⁴² This offered the opportunity to a wide range of interested people and organisations to comment on a series of questions on labour law. In March 2006 the Commission already informed the social partners about the Green Paper in the plenary session of the SDC.⁴³ Measured by the number and range of responses, the consultation was a success. No less than 450 responses were received a.o. of national authorities, European level and national level trade unions and employers' associations, civil society organisations (NGOs) and enterprises. Also the European Parliament (EP) and the EESC handed in an opinion on labour law. Apart from reaching a broad range of people and organisations at the EU, national, and sectoral level, the Green Paper put labour law in the centre of the flexicurity discussion. It quickly became one of the most sensitive issues in the European flexicurity debate and disrupted the process of creating a joint understanding on flexicurity, as we will see in the next sections.

7. Phase 3: January-June 2007

Participation by European Institutions

In January 2007, an Informal Meeting of the European Labour Ministers was organised by the German Presidency. At the first day, two meetings of the Troika were scheduled, one with the Social Platform and one with the trade unions and employers' associations. The theme of this meeting was Quality Work. Špidla mentioned in the press conference following this first day that the discussion was interesting and that there was almost a joint position on the changes at the labour market, and the need for both flexibility and security to face the labour market challenges. However, the statement of either side of social partners did not point at all to such an upcoming consensus. A German (national) employers' association stated that the discussion launched by the Green Paper on Labour Law should not lead to more regulation at the European level. He explicitly asked Müntefering, at that time Germany's Employment Minister, to take in this respect the credo "more is less" into account. A German trade union representative, on the other hand, feared that the Green Paper discussion, linked to the great vagueness of the flexicurity term, would lead to less protection of the worker. ETUC found the discussion on flexicurity useful, but solely for reasons of clarification of the issues and of detecting the differences of opinion, rather than of coming to a joint analysis. Especially the moratorium on more regulations, lead to disagreement. For ETUC, for instance, the endless prolonging of fixed term contracts was problematic.⁴⁴ BusinessEurope (UNICE) emphasised quite different issues in its contribution to the press conference. It linked flexicurity to the Green Paper discussions and asked how labour market rigidities could be reduced. Moreover, flexicurity should ensure that job protection legislation does not hamper recruitment of new workers. The Social Platform found its meeting constructive, also because it indicated that the Presidency acknowledged that civil society should be part in the debate on employment issues.

⁴² Brussels, 22.11.2006, COM(2006) 708 final, Green Paper Modernising labour law to meet the challenges of the 21st century

⁴³ Social Dialogue Committee, Agenda of the meeting of 7 March 2006.

⁴⁴ Webcast German Presidency, Informal Meeting of Ministers, 18 January 2007. 18.01.2007 - Informelles Ministertreffen Beschäftigung und Soziales: Pressekonferenz nach Troika-Treffen mit der Social Platform

Throughout 2007 EMCO working groups continued devoting attention to flexicurity. EMCO had four meetings with flexicurity discussions and the exchange of examples.⁴⁵ The results of these discussions formed an input for wider discussions in EMCO. At one of these meetings, a Dutch expert gave a presentation on flexicurity. The EP scheduled a hearing on flexicurity in the EP's Employment and Social Committee at 21st March 2007, at which Commissioner Špidla and a Dutch academic expert gave a speech. In the same month there was an informal meeting at technical level with representatives from national parliaments. Moreover, the Swedish Minister of Labour gave his view on flexicurity in a Committee gathering at April 11th 2007. At 13 February 2007 the EESC received a request from the Portuguese presidency for an opinion on flexicurity. The Section for Employment, Social Affairs and Citizenship of the EESC prepared an opinion, and adopted this on 11 July 2007.⁴⁶ The opinion argued for the strengthening of the role of the social partners, so that they would play a privileged role in Commission consultations. Therefore, it urged the Commission to increase the emphasis on the role of social partners in its consultations. Moreover, the EESC gave an opinion on the Green paper on Labour Law in May 2007.⁴⁷

Participation by the European Social Partners

In March 2007 the annual Tripartite Social Summit was hosted under the German Presidency. Flexicurity was again the topic of a discussion among the European Social Partners. An agreement on a joint analysis was thought to be feasible around April 2007. The European Commission was aware that such an agreement between the social partners might be crucial for the further development of flexicurity at the European level. In a speech at the time of the Social Summit Commissioner Špidla said:

“Flexicurity cannot be achieved without the backing of the social partners, including in the national context. Employers and workers are most affected by the changing realities in our labour market, so we need to be sure that they are on board. A joint contribution from social partners on flexicurity will be crucial to overcome difficulties and make progress in this area” (European Commission, 2007b: 1).

However, a draft text of the joint analysis was discussed in a SDC meeting in June 2007, in a session in which also the adoption of this draft text was put on the agenda.⁴⁸ From later documents we may derive that the adoption in this SDC meeting failed. By contrast, some sectoral social partners concluded their own opinion on

⁴⁵ Impact Assessment, footnote 19

⁴⁶ SOC/272; Flexicurity (collective bargaining and the role of social dialogue) Brussels, 11 July 2007
OPINION of the European Economic and Social Committee on Flexicurity (internal flexibility dimension – collective bargaining and the role of social dialogue as instruments for regulating and reforming labour markets) (Exploratory opinion).

⁴⁷ European Economic and Social Committee (2007), Opinion of the European Economic and Social Committee on the Green Paper – Modernising labour law to meet the challenges of the 21st century, SOC/246 Brussels, 30 May 2007.

⁴⁸ Social Dialogue Committee, agenda of the meeting of 20 June 2007.

flexicurity, for instance Eurociett and Uni-Europa of the temporary agency sector, that concluded a joint declaration on flexicurity at 28th February 2007.⁴⁹

Wider stakeholder participation

At April 20th 2007, some 2 months before the scheduled deadline of the flexicurity communication, the Commission organised a Stakeholder conference on flexicurity. The conference attracted 450 participants from various stakeholder organisations, which indicated the importance of the debate to the stakeholders. The main speakers were Commissioner Špidla, the Employment Ministers from Germany, Portugal and Denmark, the Chairman of the Employment and Social Committee of the EP, the General Secretary of ETUC and BusinessEurope, and the rapporteur of the Flexicurity Expert Group. In the afternoon a panel discussion was held, hosting members of European organisations such as the NGOs European Anti Poverty Network (EAPN) and the Social Platform, employers' associations CEEP and Eurociett and trade union Uni-Europa, together with some other experts from Member States.⁵⁰ At this conference the interim report of the Flexicurity Expert Group was presented and discussed.

Alternative ways of expressing opinions

From the start of the process of developing a European flexicurity policy, stakeholders reacted in public to the plans of the Commission. They held discussion days, made press releases and formed written opinions on the subject. Some of these opinions have been sent to the Commission. In its Impact Assessment, the Commission acknowledges the receipt of some of the early stakeholder opinions, among which are contributions by the civil society organisations Social Platform, EAPN and AGE and by trade unions ETUC, CESI (European Confederation of Independent Trade Unions) and EUROCADRES (trade union organisation for professional and managerial staff) and the social partners in the temporary agency sector. In addition, the Commission received the reactions to the Green Paper, however, it expected that a full outcome of this Green Paper consultation would not be available in time for the scheduled Communication on flexicurity.⁵¹ Moreover, the opinion of the EP was not expected until after the communication. Much more stakeholders entered the debate on flexicurity and tried to influence the development of the concept in numerous ways, such as by lobbying, through informal meetings, and by releasing opinions and press releases. However, naming and analysing all these activities is too much to deal with in a single paper.

Participation by external experts

At the end of June, the report of the Expert Group on Flexicurity was published, along with a report of country examples written by the rapporteur.⁵² The expert group

⁴⁹ Eurociett and Uni-Europa (2007), Eurociett/Uni-Europa Joint Declaration within the framework of the "Flexicurity debate" as launched and defined by the EU Commission, Brussels, 28th February 2007.

⁵⁰ Programme Stakeholder Conference on Flexicurity, April 20th, 2007, 9:15 – 17:45, Organised by the European Commission, http://ec.europa.eu/employment_social/employment_strategy/pdf/flex_confprogramme_en.pdf (geraadpleegd op 18 september 2008).

⁵¹ European Commission, Impact assessment.

⁵² European Expert Group on Flexicurity (2007), *Flexicurity Pathway. Turning hurdles into stepping stones*, Brussels, June 2007;

mentions in its report that it benefited greatly from the presentations and discussions at the Flexicurity Stakeholders Conference. Based on the work of the Expert group the Commission composed 4 flexicurity pathways, which were included later on in the Communication.

June 2007: flexicurity communication

Thus, preceding the communication on flexicurity which came out at the end of June 2007⁵³, a range of activities had been undertaken by the Commission and by stakeholders, to give and get input for the development of the flexicurity concept. The communication itself had, however, also the function of facilitating the debate at national and EU level, e.g. between public authorities and social partners.

The Commission was very much aware of the opposing views of the social partners on flexicurity, given the review in the Impact Assessment document. The Commission also wrote that the concerns expressed by the different stakeholders during consultations had been taken into account. Examples of this are the growing emphasis on internal flexicurity (in organisations) and on the diversity between Member States, more specifically that the Danish model is not the only flexicurity option.⁵⁴

8. Phase 4: July-December 2007

Participation by European Institutions

The Commission send its Communication to the Council, the EP, the EESC and the CoR. The first discussion following the flexicurity communication was held under the Portuguese Presidency during the Informal meetings with Labour Ministers in the first week of July 2007. At one of the days the matter of flexicurity was discussed, first with representatives of the Social Platform and then with representatives of BusinessEurope and ETUC. The social partners and civil society had to make a particularly important contribution to the debate on establishing common principles for flexicurity.⁵⁵ During the press conference following the meetings, the Portuguese Presidency explained that the discussion was a first discussion in a series of discussions. The Portuguese Presidency felt responsible for organising in-depth and open discussions involving the Member States, both sides of industry and civil society. Moreover, the Portuguese Presidency tried to frame the flexicurity-discussion in a wider discussion about the European coordination of social policy. All parties agreed to further discuss flexicurity. The representative of BusinessEurope said that the employers were prepared, in contact and negotiation with the European trade unions, to look at the European labour market development and to prepare recommendations for the Tripartite Social Summit October 18th 2007. Moreover, he hoped that these recommendations would be taken over by the Council. ETUC

Wilthagen (2007), *Flexicurity Practices*, Compiled by Wilthagen as the rapporteur of the European Expert Group on Flexicurity, Brussels.

⁵³ European Commission (2007), *Towards common principles of flexicurity: More and better jobs through flexibility and security*, Brussels: European Commission.

⁵⁴ Impact Assessment, footnote 11.

⁵⁵ Europa, MEMO/07/275 Informal meeting of Employment and Social Affairs Ministers, Guimarães, Portugal, 5-6 July 2007; Brussels, 4 July 2007.

discussed the large demonstration of Portuguese workers, some 20,000 people, against flexicurity, to emphasise that flexicurity will meet resistance throughout Europe if the social aspect of the concept would not be made clear. ETUC called for concrete measures to show workers that social Europe was alive. The Portuguese Presidency emphasised that at this stage the flexicurity concept was still the object of debate and that Portugal strove to organise open, candid, in-depth discussions in which a wide range of stakeholders would be included. The meetings of that day with representatives of trade union, employers and civil society, was an example of this objective. The debate was again seen as an instrument to move forward.⁵⁶

Another major event following the communication on flexicurity was the conference organised by the Portuguese Presidency among the European Ministers, workers' and employers' representatives, NGOs and experts at 13 and 14 September 2007. The aim was to deepen the discussion on the possibility of reaching common principles on flexicurity.

At 11 July 2007 the EP adopted a resolution on “Modernising labour law to meet the challenges of the 21st century”, which was a response to the Green Paper on Labour Law. At 28 September 2007 the Committee of the Regions (CoR) held a thematic dialogue on flexicurity with presentations of Špidla and of various regions in Europe. The CoR adopted an opinion on flexicurity in February 2008.⁵⁷ In November 2007 EMCO and SPC published a second joint opinion on flexicurity in which they gave a list of 8 common principles of flexicurity.⁵⁸ The opinion also incorporated a contribution from the EPC. The EP came with a resolution on Common Principles of Flexicurity at 29 November 2007.⁵⁹ The resolution regarded the Commission’s flexicurity communication and the Green Paper consultation; the opinion of the EESC opinion on Flexicurity and the recommendations of the European social partners in their joint declaration.

Participation by the European Social Partners

The press conference following the Tripartite Social Summit in October 2007 began very cheerful. Sócrates, Portugal’s Prime Minister, said that the day started with the announcement of a very important agreement of the European Social Partners on a joint analysis. It was regarded as one of the most important steps forward in meeting the Lisbon Agenda, a step which enabled progress in the establishment of the common principles of flexicurity. Barroso called the social partners the stars of the day and emphasised that their agreement was terribly important for the Council to consolidate consensus. Indeed, the joint analysis seemed to give input for a Council decision on common principles of flexicurity, which was first agreed upon by the

⁵⁶ Webcast of the press conference following the Informal meeting of Ministers of Employment and Social Affairs, 5, 6 and 7 July, Guimarães Portugal.

⁵⁷ Committee of the Regions (2008), Opinion of the Committee of the Regions on Flexicurity, ECOS-IV-016, 73rd Plenary Session, 6-7 February 2008.

⁵⁸ Brussels, 16 November 2007, 15320/07, SOC 461, ECOFIN 471, from : The Employment and the Social Protection Committees to : Permanent Representatives Committee (Part I) / Council EPSCO Subject : Joint opinion by EMCO and SPC on the common principles of flexicurity.

⁵⁹ European Parliament resolution of 29 November 2007 on Common Principles of Flexicurity (2007/2209(INI)).

Employment and Social Affairs Ministers at 5/6 December 2007.⁶⁰ By doing so, the Council endorsed the joint opinion of EMCO and SPC. But these were not the only influences on the end results, according to the Council decision.⁶¹ Also the resolution of the EP, the opinion of the EESC and the Communication of the Commission, were important for the decision, including the participation of all relevant stakeholders: the Member States, the European Commission, the EP, other European Institutions, the social partners and other stakeholders gave input to reflection. Moreover, the Conference on "Flexicurity: Key Challenges" held in Lisbon on 13/14 September 2007 was said to be important to further structure opinions. At 12 December 2007, the Council endorsed the agreement on the common principles on flexicurity, marking the end phase of the European level flexicurity policy-making process.

9. Conclusion

The document review of the actual flexicurity policy-making process, shows that at the various stages of the design process, various stakeholders have, in some form, participated. The document analysis only tells us something about the formal meetings that have been taken place, it is much less clear to what extent stakeholders have been able to access the policy-making process informally. Still, a number of conclusions may be drawn. Looking at the first stages of the process, a first conclusion is that some Committees within the Commission played a large role. First and foremost this was EMCO, which started contributing to the development of flexicurity right after the concept had been put on the (informal) employment agenda. EMCO did this occasionally in cooperation with the SPC. This offered the opportunity for an exchange between two policy fields: employment and social policies. Also the European social partners were included early on in the process. They were not only invited by the Council to take part in the development of flexicurity. They also had already decided to hold autonomous negotiations about the balance between flexibility and security, even prior to the formal start of the European flexicurity discussion. These autonomous discussions were facilitated and supported by the already existing bipartite discussion platform, the Social Dialogue Committee, and the official work programme of the European Social Partners. Moreover, the social partners were regularly invited for informal (Council) meetings and informal social summits in which they could discuss flexicurity. The Commission kept emphasising the important role of the social partners throughout the flexicurity design process.

During the informal meetings with the labour ministers, there was usually also a meeting between the ministers and the Platform of Social NGOs. However, looking at the documents that describe the policy-making process, a prime role of this and other civil society organisations, was not obvious. Their most important moments to engage in the official discussion were the open consultations, in which every European individual or organisation may participate, for instance the Green Paper consultation and the Stakeholders conference. However, the direct impact of these events on the Communication and the Council decision is hard to determine from the documents that were analysed, although the report of the Expert Group on Flexicurity mentions that it benefited from the discussion at the Stakeholders conference. Civil society organisations might have been included indirectly in the process, for instance through

⁶⁰ Council, 15320/07 and adopted the conclusions set out in 15497/07, defining common principles of flexicurity.

⁶¹ Council, 15497/07

the EESC or the SPC. However, from official documents it is difficult to extract such participation. NGOs did, however, publish a lot of press releases and opinions on flexicurity, which, as the Impact Assessment of the Commission shows, sometimes found their way to officials that were developing the concept. This Impact Assessment also shows awareness of the existing views, and the difficult compatibility of these views.

An exchange between different policy fields was not only instigated via the cooperation between EMCO and SPC. Also the Commission arranged a range of meetings between the relevant DGs, for instance by creating an Inter-service Steering Group. Moreover, in the Expert Group on Flexicurity external experts, among whom experts affiliated to either side of industry, were able to exchange views on flexicurity. However, both groups of internal and external experts were rather closed groups, in which not all relevant stakeholders may have been present.

Other European Institutions, such as the EP and the CoR followed the flexicurity debate, but came with formal opinions at a later stage of the process. The resolution on the Green paper on Labour law of the EP appeared in July 2007 and the resolution on the common principles of flexicurity only weeks before the Council decision. The CoR, which did not react to the Green Paper, came with an official flexicurity opinion after the Council decision. The EESC, which already commented on the Danish model at a very early stage, came with another opinion on flexicurity in July 2007. Especially the resolution from the EP seemed relevant to proceed in forming the common principles of flexicurity. But also the joint analysis of the European Social Partners, concluded in October 2007 after a long period of negotiations, was very important for proceeding the process.

Thus, a wide range of stakeholders participated in developing flexicurity and to some extent an exchange between different stakeholder has taken place. However, not all stakeholders seemed to have participated equally in the process, and some were able to come into the debate much earlier than others, at least this is the picture that emerges from analysing the official documents. Moreover, there were open consultations, providing a platform for everyone, but there were also closed groups that dealt with the development of the flexicurity concept. How then does this observation relate to the theory of new governance and the supportive role that might be offered by laws and policies? To begin with the latter question, the Treaty regulations give much less incentives for broad stakeholder participation than the policies in the various communications. This is especially true for the role of civil society organisations in the policy-making process. Moreover, the Communications clearly define the involvement of stakeholders at an early stage, whereas the Treaty provisions often do not address this issue at all. However, the right the Treaty gives management and labour to bargain on contractual arrangements gives these stakeholders a powerful forum to engage into dialogue. This dialogue between the European Social Partners and their ability to reach a joint analysis, was an important step forwards in the process of making common principles of flexicurity. The role attributed to civil society organisation in policy document, is, however, not necessarily translated into a leading role in the policy-making process, at least not concerning flexicurity. Thus, one may conclude that a wide range of stakeholders did participate in the design of flexicurity, however, not always as prominently as is suggested by theories on new governance.

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