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# AK Position Paper

**Towards Common Principles of Flexicurity:  
More and better jobs through flexibility and  
security**

## About Us

**The Federal Chamber of Labour is by law representing the interests of about 3 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.**

**The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.**

### **Organisation and Tasks of the Austrian Federal Chamber of Labour**

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community- and military service - of the 3 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labor.

Herbert Tumpel  
president

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## Executive Summary

The Federal Chamber of Labour (AK) would like to thank the European Commission for its Communication on flexicurity and submits the following opinion:

We are positively disposed in principle to the idea of integrating flexicurity into the Lisbon strategy, thereby encouraging the Member States to incorporate flexicurity approaches into the national action programmes on growth and employment that they are rewording.

However, flexicurity has been hitherto discussed as a rule in terms of a flexible labour market as a matter of priority – the legitimate interests of workers in self-determined flexibility and plugging the gaps in security are subordinate to this. This understanding of flexicurity crucially falls too short and is not shared by the AK.

The meaning of the flexicurity strategy also needs to be geared to strengthening social rights whilst taking into account economic aspects. In terms of securflex (security and flexibility), attention should be paid in particular to areas where there is a lack of corresponding “security” despite flexibility. Better legal protection for so-called outsiders (see IV. B.), protecting the health of wage earners and invalidity prevention (see IV. C.) as well as employment transitions and financial security in times of unemployment (see IV. F.) are important topics in this context.

Flexibility should be understood not only in terms of employer interests. Workers are also interested in flexibility, e.g. to balance work and family life (see IV.A.) and to prevent contract clauses that hinder mobility (see IV. E).

The most important pillar of the European social policy was hitherto the improvement of living and working conditions through minimum binding standards in the form of directives. This form of policy-making also continues to be indispensable – flexicurity measures can in no way replace it.

We need to view the problem in its entirety, with more emphasis placed on indirect and long-term effects. In the flexicurity strategy, this applies e.g. to the question of who bears the costs (see III. C and F).

Vocational training and lifelong learning are an important supporting pillar of flexicurity. At the same time, special attention should be paid to the paradox in the education policy, the financing issue and the flexibility of the vocational training system (see IV. D.).

We call for the further development of minimum social policy standards to be pursued at European level.

### I. Minimum social policy standards and flexicurity

Labour law is developed in the respective Member States as a matter of priority. The European level plays a more subordinate role here, although it is by no means insignificant. As a result, minimum binding standards were developed in large areas of labour law in the last few decades in the form of directives – in particular in the areas of employment protection, equal treatment and anti-discrimination, working time, protection against the employer’s inability to pay, protection of workers when transferring companies, workers’ participation in economic matters, protection of working conditions when posted abroad and non-standard employment.

The aim behind this development was, as defined by Article 136 of the EC Treaty, to improve the living and working conditions in order to facilitate approximation in the name of progress. It involved a gradual improvement in labour law and social policy standards.

Unfortunately, this development has almost come to a halt in recent years and a fundamental change has now emerged. The attempt to gear labour law and social security primarily to economic policy objectives, in particular “Increasing the responsiveness of European labour markets”, is already evident in the Green Paper on Labour Law from autumn 2006 and now also in

the current Communication. However, the social policy level is therefore abandoned in terms of its original objective and economic policy is pursued with social policy instruments. This is an approach that we firmly reject.

The main thrust of further development must also be the improvement of living and working conditions in future. This – at least from a medium and longer term point of view – in no way conflicts with economic policy objectives. It has already been established many times – and rightly so – that a sensibly orientated social policy is a very important productive factor (reduction in sickness costs, balance of work and family life, motivation at work through fair participation of everyone in the prosperity acquired, increase in fighting strength and with it stimulation of growth through fair income distribution etc.).

**In the given context, we must therefore not overlook the fact that the previous public discussion on flexicurity involved the pursuit of economic policy objectives as a matter of priority and that social policy was treated for the most part as just a minor aspect. We reject such a reduction of the functions of law labour and the systems of social security.**

Flexicurity should be more about bringing the legitimate security interests of workers in line with the interests of the economy

**In contrast, we call for the further development of minimum social policy standards to be pursued at European level despite the current standstill and that social policy objectives are granted at least the same importance as economic policy objectives when it comes to flexicurity measures.**

## II. General understanding of flexicurity

Whilst the term flexicurity is not new, it can nonetheless mean several things. In any case, we should not overlook the fact that we should distinguish between the means and the end. Flexicurity taken to be the intention to combine greater flexibility with the greatest possible security is only the means and should be differentiated from the goal. The predominant aim of flexicurity is taken to mean making the European labour markets more competitive against the background of increasing globalisation from other economic areas; in the process, the necessary protection of workers remains – as argued above – underexposed in the main.

Protection against dismissal and its dismantling is to the fore of the discussions for the most part, nurtured in particular by the Danish model. We clearly reject such an understanding of flexicurity and such a focus. We believe that flexicurity that is interpreted correctly should involve not just measures that are geared to making the labour markets “fitter” and protection against dismissal that has – as has already

been proved many times in prominent places – no significant effects in itself on unemployment and work (see also the AK’s opinion on the Green Paper on Labour Law from February 2007). It is incomprehensible why this fact has been ignored by the Commission for years and attempts are still being made to lessen unemployment by reducing employment protection.

**Flexicurity should not be used as a mask for a further dismantling of workers’ rights and social protection standards in the interests of neoliberal economic logic. It should be more about bringing the legitimate security interests of workers in line with the interests of the economy (and also the employers) for a certain level of flexibility. In view of the sharp increase in precarious forms of work, the main emphasis must be put clearly on eliminating existing security deficits.**

## III. Demands on flexicurity

Besides the principles cited in the Communication, flexicurity should fulfil the following additional requirements:

### A. No substitute for binding minimum standards

Opponents of binding European standards often argue that the level and the structure of labour law in the individual Member States varies a lot, which is why a standard European solution is inappropriate.

At the same time however, they overlook the fact that European directives are not geared to direct harmonisation. They are only binding with regard to the professed goal – however, they leave the form and means to the national legislators. In addition, the area of labour law is a matter of minimum standards. In accordance with the task pursuant to Article 136 EC Treaty, the living and working conditions should also be improved in order to facilitate their approximation in the name of progress. The concept is geared to a gradual increase in the level without intruding on the national structures. In this way, European labour law has also managed to achieve progress up to now. It would definitely not be good for the further destiny of the European Union if this path were to be abandoned.

### **B. No substitute for macroeconomic strategies**

The Commission postulates on page 3 of its Communication that globalisation is beneficial for growth and employment – employment has increased in the EU and unemployment has been declining steadily. It should be noted that the social standing of the population cannot be described adequately through arithmetical means alone, particularly as segmentation of the labour markets and growth in social inequalities are on the increase. This is why we should agree with the Commission when it ascertains on page 4 of its paper that prosperity

in society should be distributed more evenly, the process of change should create more winners and lead to more extensive possibilities for social advancement. More “have-nots” should become “haves”.

To achieve these objectives, we should however not disregard the fact that, besides labour market and social policy measures, macroeconomic strategies are needed above all – something which the Commission paper completely ignores. We should also not forget that excessive budget targets (Stability Pact) have led to restrictions in the labour market policy and the structuring of social security systems, which stand in the way of positive flexicurity intentions.

### **C. Integral view needed**

We should not overlook the fact that changes in one area also affect other areas as a rule. If we view for example the Danish model (low protection against dismissal, high benefits of active and passive labour market policies), it appears as if there are only winners based on the description in EU documents. Employers have the desired flexibility and workers the desired security.

At the same time, a good many things are ignored in the main in terms of understanding the “Danish model” in the discussion at EU level, not least the issue of the costs of high benefits linked with active and passive labour market policies. Denmark has very high public spending compared with the rest of the EU and therefore enjoys a fairly high scope of action among other things in the area of labour market policy. If the Danish flexicurity model is now being highly praised at EU level on the one hand and there is talk at the same time of a reduction in public spending and nothing is being done about tax competition (race to the bottom), then this quite clearly does not go together.

A fascinating question also concerns the forms in which the necessary resources for the labour market policies will be raised with such an approach (extremely low protection against dismissal combined with high benefits of active and passive labour market policy). If the costs are borne by the public sector, then this will amount to costs being shifted from companies to the general public as a rule. In this case, employers will have little incentive to invest in on the job training and will try to burden the active labour market policy with qualification/skill requirements. In the end, this can amount to a policy based on the motto “nationalising costs and privatising profits”.

In our opinion, for every (economic) policy measure geared to flexibilisation

or liberalisation, the accompanying requisite measures to protect against resultant social problems or gaps in services for the public and the costs accrued should also be depicted and their financing ensured. The scope for a flexicurity approach that is actually balanced in this sense should be sketched at EU level and should be reflected in all policy areas.

#### **D. Balanced approach**

The previous discussion on flexicurity was based on the interests of enterprises as a matter of priority and flexibility was clearly to the fore in terms of employer interests. However, a balanced approach is needed that refers to real deficiencies also on the part of workers with regard to security as well as flexibility.

The sharp increase in the precariousness of working conditions necessitates that the main focus in terms of securflex (security and flexibility) is on areas in which there is high flexibility but a severe lack of security. In the process, it involves among other things the following problems:

- Lack of labour law and social security law protection for many atypical employees;
- Failure to comply with labour law standards in accordance with the Posting of Workers Directive (cross-border assignments);
- Precarious status of many employees in the informal sector;

- Workers who, whilst enjoying legal protection in theory, have very limited practical access to the law.

It is also incomprehensible that the EU Commission does not devote itself to the forms of employment being established in all Member States that can be combined under “self employed persons”. These persons working in many cases in a grey area between employment and self-employment are self-employed in accordance with the letter of the law, although elements of employment are often predominant from an economic viewpoint (dependency on one customer etc.). This employment group is often affected by precariousness because it belongs to those groups that have to bear the costs of enhanced flexibility scope for enterprises. We believe that these persons should also constitute a core target group of a flexicurity strategy that is properly understood. In so far as the elements of employment predominate, those affected also need to be treated as such and be included in the corresponding protection provisions (labour law, social protection).

It should therefore not only be about taking additional social policy measures whose target group are the underprivileged people and those furthest away from the labour market (Communication, page 9, halfway down) – social policy measures need to be integrated in the flexicurity strategy as a key element.

We also regard it as a serious deficiency of the Communication that integration policy questions and challenges in view of the increasing number of third-country nationals in the Member States as well as the intended reorientation of the EU migration policy (key word “circular migration”) in connection with flexicurity are not being explicitly picked out as a central theme.

In addition, there needs to be a lot more consideration given to the fact that there are also legitimate wishes among workers for self-determined flexibility (e.g. for better reconciliation of work and family life) and that these are often at variance with the flexibility wishes of the economy (working hours set by the employer depending on the workload). This tense relationship is also expressed e.g. in common employment contract clauses that restrict the mobility of workers (forfeiture clauses with regard to company pension rights, excessive repayment clauses for training costs, competitive clauses etc). We believe that the specific prevention of such contract clauses and ensuring flexibility determined by workers must be essential parts of the flexicurity strategy.

We need to think a lot more about taking the interests of workers and employers into account in a balanced form as far as the flexibility strategy is concerned.

**We need to think a lot more about taking the interests of workers and employers into account in a balanced form as far as the flexibility strategy is concerned. This calls on the one hand for a greater focus on existing security deficits and on the other for a more balanced approach to flexibility.**

#### **F. Taking distribution policy aspects into account**

Flexicurity measures often refer to demographic or worker groups with a low income, poor education and high poverty risk. However, narrow limits are therefore imposed on the Commission's financing approach in which "workers may also bear some of the costs". Flexicurity financing needs to take the current distribution policy difficulties in the vast majority of Member States into account – with e.g. Austria's policy even criticised by the OECD. Otherwise groups that need flexicurity measures in particular will not be reached at all. When for instance the European Commission proposes that "public policies may also stimulate lifelong learning financed by individuals, e.g. through tax deductions", then it needs to be at least clear to Austria that the lower income groups (and as a rule also the worker groups with a low level of qualifications/skills) are therefore excluded de facto

**As a result, flexicurity strategies should not lead to further questionable outcomes in terms of the distribution policy. In our opinion, narrow limits**

**should therefore be imposed on the financing of flexicurity measures with amounts from individual workers.**

#### **G. Indicators should not present a distorted picture**

It is problematic to depict whole areas of a country's economic life on the basis of just a few indicators and to then compare them with other countries. It is unfortunate that the labour market and flexibility of a country is for example often measured on the basis of a few indicators. At the same time, a distorted picture emerges very quickly as there are not that many clear and easy to measure indicators.

A good example of this problem is also depicted by the first group of indicators in Annex 1 of the Commission Staff Working Document on page 44. This states:

- Flexible contractual arrangements through modern labour laws
- Indicator of the strictness of employment protection total, for permanent and for non-permanent employees (OECD, Index scale 1 to 6).
- Share of employees with fixed-term contracts (EUROSTAT)
- Share of employees with part-time contracts (EUROSTAT).

We consider intensive integration of the social partners in drawing up the flexicurity strategies to be an indispensable element.

The question as to how flexible the contractual arrangements are and also how “modern” labour law is should therefore be answered using three indicators, namely employment protection, the share of employees with a fixed-term contract and part-time employees. This is not only completely inappropriate in terms of the social policy, but also grossly irrelevant. A (very narrow) employer standpoint is clearly being made here on the benchmark of labour law “modernity”. We firmly reject such an approach.

The following should be noted on internal flexibility, gender equality and the role of social partners (see in particular points 5, 6 and 7 on page 11 of the Communication):

#### **Taking internal flexicurity into consideration**

Unfortunately, in section 2 of the Communication the European Commission fails to discuss so-called “internal flexicurity”, i.e. the establishment of integrated strategies in companies in order to strengthen flexibility and security for employees in an enterprise. Considerable room is devoted to this aspect of flexicurity in the preliminary and accompanying documents to this Communication, although in the actual Communication one can only guess that flexicurity is not only about designing education systems, employment and social security systems, but also about management methods, shaping work

processes and labour markets in enterprises. This aspect should not be lost in further discussions and when implementing flexicurity in the Member States.

This shortcoming becomes apparent above all when the components of flexicurity are presented. Without taking into account the operational level for implementing flexicurity, the aspect of early prevention of job-related illnesses and early avoidance of further health defects caused by given workloads in a workplace is not taken into consideration for example. However, as we see it this aspect is an indispensable element of a forward-looking flexicurity strategy with regard to maintaining the employability of ageing workers. This also goes for switching between full-time and part-time employment with one and the same employer.

#### **Role of the social partners**

We consider intensive integration of the social partners in drawing up the flexicurity strategies to be an indispensable element. Only in this way can we realise e.g. that which the EU Commission itself emphasises – that flexicurity cannot function without a minimum degree of trust between the labour market parties and between these and the public authorities.

Flexibility and working time is almost exclusively discussed from the employer's point of view.

In some ways, even social partnerships and their instruments like collective agreements and works agreements should be considered as an expression of flexicurity. In the process, we should consider for example the many regulations in collective agreements and works agreements in Austria in order to make working hours more flexible (combined with workers' rights) or the topic of "labour hire".

It is unfortunate that the structures of social partners are difficult to discern in quite a few Member States, which is why these can only play a limited role. Specific strengthening of the respective stakeholders would be very sensible here in order to be able to breath life into flexicurity.

#### **Gender equality**

Employed women in Austria – excluding working time adjustments – earn just 60% of the mean male income on average. Key factors that are responsible for the disparity in women's income, besides plain discrimination and poorer opportunities for advancement, include the dominance of women in poorly paid industries as well as one-sided responsibility for care work with a childcare infrastructure that is also lacking. This brings with it long career breaks and part-time work as the only option for possible employment.

This is why long baby breaks and their negative impact on women's incomes are very evident over the course of a

woman's income: the income disparity of young women is still relatively small at 94% of men's income at the start of their careers (up to 19 years of age). However, this gradually increases: in the 50- to 59-year-old group, women only achieve 62% of men's income. Whilst men can count on a progressive increase as they grow older, women's incomes experience extensive stagnation in the 20-39 age groups – exactly in that phase of life in which many women interrupt their careers because of children or switch to part-time employment. Women in the 30-39 age group only earn 55% of what men do. Whilst there is an increase again afterwards, this is much less compared with men (wage tax statistics, 2004).

#### **IV. Main objectives and specific measures**

We consider the following objectives and specific measures to be a matter of priority in connection with flexicurity:

##### **A. Reconciliation of work and family life**

Flexibility and working time is almost exclusively discussed from the employer's point of view. The interests of male workers and in particular female workers in the flexible organisation of working time are regularly ignored.

The reconciliation of work and family life and care duties in particular is gaining in importance in view of increasing female participation in labour markets, an ageing society and the increasing care needs of old people and the (even if very slow) growing awareness of care duties by men. Parents need working hours that can be planned and flexible organisation possibilities for when special events (sudden child illness etc.) make this necessary. This is why we need to place the focus much more on employers being flexible towards the needs of parents.

Child care is of course also of utmost importance in terms of the reconciliation of work and family life. There is a striking uncovered demand for this in Austria. The density of child care facilities (13%) continued to be extremely low in Austria in 2006, particularly with children under 3 years of age. A total of 48,000 places need to be created in order to achieve the objective set by the Barcelona European Council of 33% by 2010 for this age group. In addition, there is the fact that the majority of child care facilities only offer limited opening hours, e.g. nursery schools are only open in the morning or already close at 3 p.m., or are open all day but do not provide lunch. It is therefore scarcely possible, or only to a very limited degree, for persons with care responsibilities to be gainfully employed. These restrictions apply to nursery schools to a particular extent, i.e. to the group of 3-5 year olds that actually have care quotas of 84%. Yet only around a third of 3-5 year olds have

a place in nursery school, which is fairly consistent with gainful employment. The assistance promised by the Austrian government of € 15 million (co-financing by the federal states in equal measure) for strengthening child care support is an important first step. However, it is not nearly enough to meet the European target figures.

The present Communication describes child care as essential for the reconciliation of work and family life, and it is also given as an example in the creation of modern social security systems – as one of the four components to be used to implement flexicurity measures. This is to be welcomed. In our opinion, strengthening child care facilities as needed constitutes a key cornerstone of flexicurity. The European comparison in particular shows that countries with a highly developed child care infrastructure like for instance Denmark, Sweden and Finland also enjoy significantly higher employment among women and higher birth rates.

Jointly responsible for the difficulties that women with children experience on the labour market is, besides the lack of child care infrastructure, also how the childcare allowance, which was introduced in Austria in 2002 and hinders employment, is structured.

Current evaluations show that there is a connection between the length of drawing childcare allowance and the long career breaks taken by women, and that women need to accept considerable losses in income after breaks necessitated by care when they return to work. The introduction of the child care allowance also did not create any incentives to increase the participation of fathers in childcare – traditional gender roles were in fact strengthened.

Whilst these findings are taken into account in the Austrian draft bill on childcare allowance that is now available, it is not enough. In future, besides the existing possibility to receive € 436 in childcare allowance for 30 months (+ 6 months if sharing it with the other parent), it should also be possible to receive a “short-term benefit” of € 800 for 15 months (+ 3 months if shared). The Austrian social partners welcome this amendment of the law; however, in a joint opinion on the draft bill they declare themselves in favour of creating further options that also take into account the maximum duration of parental leave in accordance with labour law (second birthday of child) in order to actually offer parents choices in view of the large gaps in childcare support. In addition, they pronounce themselves in favour of additional measures in order to eliminate factors in the current regulation that hinder employment. This is why we should examine a choice between the sum-based additional income limit (in accordance with the current regulation)

for childcare allowance and a working time limit of up to 24 hours a week for childcare allowance that can be received irrespective of income. This would make it much easier in particular for better qualified women to return to work and would also be an important spur for fathers to reduce their working hours in order to undertake care duties.

There is also a need for action regarding the reconciliation of work and family life in the area of patchwork families. Care leave in Austrian labour law refers for example only to children by birth, and also only to these, not however to the partner’s children.

### **B. Better legal protection of so-called outsiders**

As the EU Commission has already emphasised in its Green Paper on labour law, there has been a sharp increase in extremely varied employment contract forms and in particular non-standard contracts in recent years. As regards this flexibility, which is being used more and more by employers, labour and social law protection, i.e. the security aspect, fell by the wayside in many cases. In the process, minimum Community Law standards like the part-time working directive or the directive for fixed-term workers only offer protection for parts of these “flexible” relationships – and it is also insufficient here. In the case of non-standard employment forms, there is a lack of adequate social law and labour law protection in apparently all EU Member States.

Austria largely managed to include considerable parts of non-standard employment (so-called “quasi-freelance contracts” and the “new self-employed”) in its social security systems in 1997. It therefore managed to counteract precarity in old age or in the event of illness. In December 2006, full integration of “quasi freelancers” in the social security system was proposed by the social partners in a paper jointly presented (in particular integration in unemployment insurance as well). The new federal government included this agreement in its work programme. It is expected to be implemented in the next few months.

Gender-specific segmentation on the labour market occurs a lot in Austria with regard to part-time work. Four out of ten women now work part-time in Austria, whilst part-time work among men is still marginal at 6.5%. Part-time jobs are to be found to a far greater extent in industries with poor pay and in unskilled areas. As a result, 39% of all women in part-time work have auxiliary jobs and semi-skilled jobs, whilst this is a lot less with women in full-time work (25%). In comparison, only 13% of all women employed part-time have high-level jobs and managerial jobs – with women employed full-time, the percentage in these fields of activities is twice as high at 27% (2006, Statistik Austria, own calculations). Employment stability among part-time workers is also lower: according to Statistik Austria (AKE micro census, special evaluation),

39% of workers (men and women) were employed for less than 3 years on average in 2006 compared with 29% for full-time employees. Part-time employment therefore has a strong gender-specific feel. In Austria – as in many other European countries – women taking up part-time work end up in a marginalised position on the labour market with clockwork regularity. This is why the decline in career prospects – which is often accompanied by a decision to work part-time – needs to be counteracted by solid transitional possibilities from full-time to part-time work and vice versa; for example by also extending the possibility of part-time work for parents to employees in small enterprises, providing access to all professional part-time positions or including part-time workers in further training in the enterprise and career planning.

In connection with this, it should be emphasised that as part of the current reform of the Working Time Act (Arbeitszeitgesetz) in Austria, an important step towards improving the conditions for part-time workers managed to be taken, which is also very much in keeping with the flexicurity approach. The Working Time Act, which should enter into force on 1 January 2008, provides for the introduction of overtime pay: part-time workers that do overtime have a right to statutory overtime pay of 25% in future under certain conditions.

We consider this measure to be not only positive in terms of improving the income of part-time workers, but also hope that the fragmentation of full-time work into part-time contractual arrangements or insignificant contractual arrangements (which often do not ensure a living) will be stemmed.

There are also plans in Austria to create a modern, standard worker concept. It aims to combat above all apparent self-employment and forcing workers out of the labour market. In view of the ever greater actual weakening of the criterion of personal dependency in modern working relations, an adapted worker concept should be geared more to the element of economic dependency than to the element of personal dependency. Precarious forms of employment can therefore also be reduced in the end and the security aspect increased.

However, an EU-wide standard worker concept would also be desirable, realistically in the sense or the form of a minimum European standard. A "bare" minimum standard is therefore realistic given that – at least at the moment – agreement on a standard worker concept is scarcely attainable and therefore remains an area of regulation that goes beyond the national realm. A certain amount of European standardisation is required above all with regard to the provisions of the directive on the recognition of professional qualifications vis-à-vis the freedom to provide services. If differences namely

exist between the Member States in terms of distinguishing between self-employment and employment, then this leads inevitably to problems in cross-border work. In the process, we should think about e.g. transitional provisions in the accession treaties and checking worker protection legislation.

In addition, there is however also the problem – as already discussed above – of worker groups without actual access to the law. Workers, migrants and other persons working across borders with a very weak position on the labour market are affected in particular by this. In the process, improvements are needed in particular regarding the possibility of safeguarding entitlements (civil law) vis-à-vis cross-border cases, regulatory control of working conditions and the delivery and enforcement of administrative penalties vis-à-vis cross-border cases (for more details, see also the BAK's opinion on the Commission Communication: Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers of 2 August 2007). Regarding this, the social partners also made proposals in December 2006 that were included by the federal government in its work programme. It provides in particular for greater control of workers that are posted abroad and the wage and working conditions that are to be complied with. We assume that corresponding measures will be implemented swiftly.

No adequate security measures were taken in terms of improving the labour market prospects of older workers, protecting the health of employed persons and invalidity prevention.

### C. Improving health protection and invalidity prevention

Owing to the reforms in pension law in Austria, on the one hand there is increasingly an actual rise in the retirement age and therefore working life, and on the other an increase in daily working hours for a good many workers due to working time law being made more flexible. Unfortunately, no adequate security measures were taken in terms of improving the labour market prospects of older workers, protecting the health of employed persons and invalidity prevention. Regarding this, there is a considerable need for action – in particular also in view of the low employment rate and the relatively high unemployment rate among older workers. This is why the social partners proposed a number of measures to increase the employment rate and employability of older workers in December 2006, and a national action programme on this was announced in the current government programme. In concrete terms, improvements are planned in the area of active labour market policy (customer-friendly use of rehabilitation aid, extensive development of advisory, care and rehabilitation services for workers whose health is at risk or is impaired, increasing co-operation between private and public job placement), revamping the regulation on part-time work for older workers, increasing lifelong learning, revamping invalidity pension law and more investments in prevention and health

promotion. In the latter, we consider above all the aspect of workplace health promotion and the establishment of jobs suitable for mature workers in enterprises as essential. The basic prerequisite for staying gainfully employed longer involves maintaining one's health and employability. We think it is extremely important that more activities are carried out in this area in Austria.

However, binding use of work and organisational psychologists, a further increase in the training quality for health and safety experts and extension of co-determination in the area of worker protection also provide support. We believe that the AUVA (Austrian Social Insurance for Occupational Risks) should develop integrated prevention as its core competence. In addition, there are calls for a regulation with regard to the ArbeitnehmerInnenschutzgesetz (Protection of Workers Act) in order to standardise the manual handling of loads. Special consideration should be shown for risk groups like 14- to 16-year-olds, pregnant women and workers older than 45.

With regard to minimum European standards in the area of worker protection, it should be noted that the legislation is 15 years old in the main. In the meantime, many new discoveries have been made. These need to have some bearing on the directives.

#### D. Further training and lifelong learning

One positive worth noting is that the Communication devotes sufficient space to lifelong learning. Many points address the importance of lifelong learning processes. It is also worth emphasising in particular here the discovery that new efforts and initiatives are needed above all for low-skilled workers (starting with the group of illiterate adults) as well as for the group of temporary workers.

In connection with this, reference should be made in general terms again to the education policy paradoxes. This states that persons with a low level of education have poorer access to vocational training and that these tend to focus on young (i.e. not old), well educated men. Measures taken should therefore place special attention on poorly trained workers, women, older people, the disabled and atypical workers.

One shortcoming of the Communication is that the abstract nature of the recommendations leaves a great deal of room for interpretation. The European Commission is therefore taking a step backwards from its document "Making a European area of lifelong learning a reality" from 2001. It contains concrete recommendations such as employers providing their workers with at least 35 hours of learning a year. However, the current recommendation of "putting into place a system of individual training accounts" refers to public co-financing models, with – as already practiced in

reality – corresponding contributions from workers and with it the above-mentioned limitations (III. F).

There is also no specific reference to measures for the longer-term exemption from employment for the purpose of learning, as depicted for example by unpaid leave for training (e.g. in Austria and in Scandinavia). Programmes above all for adults to acquire better qualifications/skills will therefore become easier to access.

However, the EU Commission generally expects enterprises to "forcefully step up their investments in lifelong learning and employability of their workforce" – a request that is extremely important especially for countries like Austria with relatively low spending by enterprises on training (see the CVTS II study) compared with other European countries. This topic is of great importance not least against the background of the discussion currently being held on the lack of skilled personnel.

Tax policy incentives for more investments in further training are proposed in several places. It should be noted that this instrument is only suitable for people with higher incomes and that others cannot benefit from it or only scarcely. This is why such measures should be rejected from a distribution policy perspective and against the background of education policy paradoxes (see above).

When taking about flexibility, we should not forget the flexibility of the training system itself.

As far as the tax incentives for enterprises are concerned, we should in any case ensure that the effect is indeed “increased investments in training”. This should be evaluated constantly in order to curb the effects of people “cashing in” as much as possible. The Netherlands has for example again discontinued its educational tax allowance of 40% for enterprises to train older people and low-skilled workers.

When taking about flexibility, we should not forget the flexibility of the training system itself. Examples of flexible systems (like e.g. in Great Britain or Finland) are those that allow people to enter into lifelong learning at any time starting out at any level, with the prospect of acquiring professional competences that are also recognised and allocated accordingly in the respective national qualification framework. Integration in the EQF (European Qualification Framework) is then decisive for the mobility of workers in Europe.

For more details on training during unemployment, see also F. Employment transitions.

#### **E. Contract clauses that hinder mobility**

We fail to comprehend why the EU Commission, whose main goal appears to be a flexible labour market, does not include contract clauses that hinder mobility in the discussion. We should not be surprised if the impression emerges

that the pursuit of employer interests is firmly to the fore.

Contract clauses that hinder mobility involve agreements that make it difficult or impossible for workers to change from one company to another. This includes e.g. the forfeiture provisions in company pension commitments that have been discussed a great deal recently at EU level, which comprise the loss of acquired expectancies if employment is terminated within a period of e.g. 5 years (maximum forfeiture period for Austrian pension funds). Non-competitive clauses that oblige workers to be neither employed nor self-employed in the employer’s sector after employment has ended are another example. There are more and more agreements that oblige workers to refund the costs for any training financed by the employer after employment has ended. Such clauses make the right to give notice more difficult and therefore impair the career progress and mobility of workers. Statutory regulations that prohibit such clauses or at least limit them considerably would help make the labour market more flexible and therefore need to be an integral part of flexicurity.

#### **F. Employment transitions**

Approaches that provide for a reduction in the transitional periods between the loss of a job and starting a new, better position and a higher income thanks to educational measures during unemployment are highly desirable and

good examples for flexicurity.

The cost and financing question should be noted (see above III. C.).

We should take a more critical view of those measures that are geared less to preventing the famous negative spiral in the case of unemployment, but rather to the more or less distinct and discernible compulsion to accept a new job without taking personal or family circumstances into consideration.

Even if the transitional periods are reduced, adequate financial security in times of unemployment is also needed in particular in view of increasing mobility on the labour market. This is inadequate in Austria. The benefits that unemployed persons are granted in Austria are very low in absolute terms and also compared with the rest of Europe. The lower incomes of women in Austria also have a negative effect on social protection during unemployment. In addition, many women lose unemployment benefit because their partner's income is counted towards assistance for persons no longer eligible for unemployment benefits (Notstandshilfe) and they are therefore pushed into positions away from the labour market. Around 16,500 persons were affected for example by a suspension of assistance for persons no longer eligible for unemployment benefits or rejection of their application for assistance for persons no longer eligible for unemployment benefits in 2006, with by far the majority (85%) women.

Getting rid of the discriminatory practice of counting the partner's income towards assistance for persons no longer eligible for unemployment benefits would therefore be essential from an equality perspective and an important measure in avoiding poverty. The measures announced in the government programme to raise the low assistance for persons no longer eligible for unemployment benefits and not count the partner's income towards assistance for persons no longer eligible for unemployment benefits vis-à-vis a household income up to the target rates for the family equalisation allowance (for 2007: € 1,091.14 a month plus € 76.09 for each child) would be an important first step in this direction.

For many women, further training is also not viable due to the low unemployment benefit that does not provide a secure livelihood. At present, the legal position in Austria is such that unemployment benefit is still paid during training. Persons on low benefits receive an additional payment at the DLU level (benefit to cover the cost of living) of € 555 a month. However, attendance of a longer-term measure is therefore not viable for many. This is why we believe that livelihood security should be applied at least at the level of target rates for the equalisation allowance (€ 726 for single persons, € 1,091 for couples plus € 76 for each child).

For more information on the transition from full-time work to part-time work and vice versa, see above under B. Better legal protection of so-called outsiders.

## V. Concluding remarks

If the demands referred to under Point III are taken into consideration, then the flexicurity approach in the employment and social policies of the Member States can actually help to create “more winners from the process of change and more upwards mobility”.

We are also positively disposed in principle to the intention to integrate flexicurity into the Lisbon strategy and in this way encourage the Member States to include flexicurity approaches in national action programmes for growth and employment that they are rewording. Against the background of the variety of employment and social security systems in the European Union, it is neither desirable nor sensible to establish flexicurity by way of EU legal instruments. Nevertheless, we believe that the proposal that aims to establish flexicurity in the internal market exclusively via the method of open co-ordination as part of the Lisbon process falls short. The European Union is after all itself a partner in implementing flexicurity in the Member States, for example via its economic policy competences, its role in competition policy and competition law and not least also by organising the budget and fiscal policies of the Member States by way of the Economic and Monetary Union targets. This is

why it must also take up its part of the responsibility for implementing flexicurity in the internal market not only by organising a co-ordination process, but also by setting up statutory frameworks for policy-making and implementation in the Member States as well as flexicurity mainstreaming in its other policies. As a result, we feel that implementing flexicurity in the employment and social security systems of the Member States must be supported by legal EU instruments as well as by observance of the necessities of flexicurity in the other competence areas of the EU, in particular in the economic and competition policy. As we see it, relying exclusively on the method of open co-ordination could result in further social competition among the Member States (race to the bottom) with the establishment of flexicurity.

We also consider it necessary to draw up a medium and longer-term strategy in order to optimise the flexicurity situation in Austria in the light of the criteria cited. This strategy must answer complex questions that concern almost all policy areas, and also address the competences of the Federal and Länder Governments and local authorities. We believe that this strategy process should therefore not be coordinated by a functional department, but rather by the Federal Chancellery.

The AK kindly requests you to take the above arguments into account during the discussions at European and national level and to inform us about further developments.

For any further questions please contact

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