



**COUNCIL OF
THE EUROPEAN UNION**



16139/07 (Presse 284)

PRESS RELEASE

2837th Council meeting

Employment, Social Policy, Health and Consumer Affairs

Brussels, 5-6 December 2007

Presidents

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16139/07 (Presse 284)

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Main results of the Council

The Council adopted common principles of flexicurity.

The Council had for the first time a fruitful debate on the access of migrant people to health care on the EU.

CONTENTS¹

PARTICIPANTS.....	5
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ITEMS DEBATED

EMPLOYMENT AND SOCIAL POLICY	8
Working time / Temporary agency workers	8
Common principles of flexicurity - <i>Council conclusions</i>	13
Future prospects for the European Employment Strategy in the new cycle of the Lisbon Strategy - <i>Council conclusions</i>	13
Social services of general interest.....	14
Coordination of social security systems.....	16
Supplementary pension rights.....	17
Active inclusion of people furthest from the labour market - <i>Council conclusions</i>	17
Beijing platform for action - <i>Council conclusions</i>	18
Follow-up to the European Year of Equal Opportunities for all (2007).....	18
Balanced roles of women and men - <i>Council conclusions</i>	18
MIGRATION, EMPLOYMENT AND LISBON STRATEGY	19
HEALTH.....	21
Health and Migration in the EU - <i>Council conclusions</i>	21
EU Health Strategy - <i>Council conclusions</i>	22
Organ donation and transplantation - <i>Council conclusions</i>	23
Strategy for Europe on nutrition, overweight and obesity - <i>Council conclusions</i>	23
Combating HIV/AIDS within the EU and in neighbouring countries	23

¹ • Where declarations, conclusions or resolutions have been formally adopted by the Council, this is indicated in the heading for the item concerned and the text is placed between quotation marks.
 • Documents for which references are given in the text are available on the Council's Internet site (<http://www.consilium.europa.eu>).
 • Acts adopted with statements for the Council minutes which may be released to the public are indicated by an asterisk; these statements are available on the Council's Internet site or may be obtained from the Press Office.

OTHER BUSINESS 24

OTHER ITEMS APPROVED

none

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Minister for Employment
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Member

Member

Other participants:

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Mr Emilio GABAGLIO

Chair of the European Social Protection Committee

Chair of the Employment Committee

.....

ITEMS DEBATED**EMPLOYMENT AND SOCIAL POLICY****Working time / Temporary agency workers**

The Council sought to reach political agreement on two draft directives, the first one aimed at amending Directive 2003/88/EC concerning certain aspects of the organisation of working time¹ (16061/07), the second one aimed at establishing working conditions for temporary agency workers (15086/07 ADD1).

Already, in July, the Presidency announced that it would consult with different member states in order to evaluate the conditions for balanced solutions concerning the legislative files under discussion in the (EPSCO) Council, namely the two above mentioned draft directives.

The need for progress on these two draft directives was clear. The need to move forward was recognised by most member states, many of which have problems they need to address.

After extensive bilateral consultations with different member states and the Commission, the Presidency decided to present compromise proposals for both directives.

In the past, both draft directives had been discussed separately, but the Presidency considered they were linked since they deal with central aspects of the regulation of contemporary labour markets. Given the difficulties in finding separate solutions for each of the files, the Presidency decided that there would be added value in working on a simultaneous and integrated solution, thus allowing member states to find a balance between the two directives that would be acceptable from the political point of view.

¹ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 (OJ L 299, 18.11.2003, p. 9).

This joint approach was widely accepted by a large majority of member states, in the Council. The connection between the two directives, and more specifically the proposals presented by the Presidency, was considered a solid and viable basis for negotiation towards an agreement on both.

The Presidency explored different solutions, within the balanced framework underlying the proposals, to reach an enlarged consensus that would be politically desirable.

Bearing in mind the fact that this linked proposal was still very recent, as well as the sensitive nature of these directives for some member states and the importance of exploring all attempts to reach as broad an agreement as possible before the final decision was taken, the Council agreed that the best option at this moment was to postpone a decision, in order to further pursue the dialogue.

Nevertheless, the Presidency noted that a vast majority of member states had spoken in favour of an integrated solution for the directives, building an overall equilibrium between the two, and that many member states had pressing needs to address labour market regulation problems which depended on a solution on these files. Achieving results in the short-term is therefore of utmost importance for the EU as a whole.

Thus, and respecting the dominant orientation within the Council, the Presidency stressed that this openness to dialogue and consensus sought only to strengthen the conditions for a solution that reflected the position of a clear and strong majority. The proposals presented are a major step forward, because they now open up an appropriate way of reaching a solution on these files. There is a real margin for political decision in 2008, building on the solid basis for progress that the Council has just established. The forthcoming presidencies and the Commission might proceed with efforts to achieve a positive and final outcome on both directives, given the importance of the issues at stake and the specific needs of many member states.

Working time

Directive 2003/88/CE establishes minimum requirements concerning the organisation of working time, inter alia in respect of daily and weekly rest periods, breaks, maximum weekly working time, annual leave and certain aspects of night work, shift work and patterns of work.

The objective of the draft amending Directive currently under examination is twofold:

- First, it would prevent some of the consequences of the European Court of Justice's case law, in particular of the rulings in the SIMAP¹ and Jaeger² cases, which held that any on-call duty performed by a doctor, as long as he or she is required to be physically present in the hospital –even if he or she spends his or her time resting – must be regarded as working time. It is currently impossible for member states to apply European case law strictly, without a huge impact on their medical structures and economies. To avoid those negative effects, the draft Directive would introduce a definition of "inactive part of on-call time".
- Secondly, to review some of the provisions of Directive 2003/88/EC concerning the possibility of not applying the maximum weekly working time (48 hours) if the worker agrees to work longer hours (the "opt-out" provision).

With a view to achieving agreement, the Portuguese Presidency tabled a set of proposals, built on previous Presidencies' compromise texts.

The Presidency text provided for the possibility of the opt-out clause, with some elements being taken into account to guarantee the protection of health and safety of workers, in particular:

- the opt-out clause would be seen as an exception, the working week of a maximum of 48 hours being the general rule in the EU;

¹ Judgment of the Court of 3 October 2000 in case C-303/98, Sindicato de Médicos de Asistencia Pública (SIMAP) v. Conselleria de Sanidad y Consumo de la Generalidad Valenciana, ECR 2000, p. I-07963.

² Judgment of the Court of 9 September 2003 in case C-151/02, reference for a preliminary ruling: Landesarbeitsgericht Schleswig-Holstein (Germany) in the proceedings pending before that court between Landeshauptstadt Kiel and Norbert Jaeger, ECR 2003, p. I-08389.

- implementation of the opt-out must be laid down by collective agreement, agreement between the social partners or by national law;
- employers and employees must consider other flexibility provisions – such as the longer reference period when counting working time – before making use of the opt-out provision;
- it would not be possible for a member state to make use of both the longer reference period and the opt-out clause;
- an employee who refuses to work more than the average working time must not suffer as a result;
- an agreement signed at the beginning of the working contract would be null and void;
- a weekly limit of working hours would be set for workers who agree to the opt-out;
- there must be follow-up by the national authorities;
- a specific evaluation must be conducted at European level of the provisions concerning the opt-out and the implementation of longer reference periods; taking into account this evaluation, the Commission may, if appropriate, submit a proposal to revise the Directive.

Legal basis proposed: Article 137(2) of the Treaty – qualified majority required for a Council decision; codecision procedure with the European Parliament applicable. The European Parliament delivered its first-reading opinion on 11 May 2005 (8725/05) and the Commission its amended proposal on 31 May 2005 (9554/05).

Temporary agency workers

Temporary agency work is seen as a key factor in meeting the requirements of the Lisbon Strategy, as it contributes to increasing both employment and competitiveness.

There are considerable differences in the use, legal situation, status and working conditions of temporary agency work within the EU. In this context, the draft Directive aims to establish, at European level, a common legal framework to regulate temporary agency work. It seeks to strike a balance between flexibility and job security, while completing a package of measures aimed at regulating working conditions for so-called "*atypical*" workers. It will, in its turn, be complemented by Directive 91/383/EEC of 25 June 1991¹, supplementing the measures to encourage improvements in safety and health at work.

The draft Directive would apply to workers who have an employment relationship with a temporary agency and who would perform temporary work under the supervision and direction of a user undertaking. It aims to ensure the protection of temporary agency workers and to improve the quality of agency work by ensuring, in particular, that the principle of equal treatment – in relation to workers recruited by the user undertaking to occupy the same job – is applied. Temporary agencies would be recognised as employers.

The main outstanding issues may be summarised as follows:

- prohibitions and restrictions on temporary agency work, in particular, their review or removal;
- the principle of equal treatment, possible exceptions to that principle and the maximum length of assignments to which such exceptions can apply.

Legal basis proposed: Article 137(2) of the Treaty; qualified majority required for a Council decision; codecision procedure with the European Parliament applicable. The European Parliament delivered its opinion at first-reading in November 2002².

¹ OJ L 206, 29.7.1991, p. 19.

² 14331/02.

Common principles of flexicurity - *Council conclusions*

In response to the 2007 Spring European Council mandate¹ and following the Commission communication: "Towards common principles of flexicurity"², the Council held a debate on flexicurity.

At the end of the debate, the Presidency underlined the consensual commitment of the delegations that allowed an agreement on common principles of flexicurity which guarantee a well balanced definition of flexicurity that respects stability in contractual relations and during employment transitions as well as the role of the social partners.

Thus, the Council endorsed a joint opinion of the Employment and Social Protection Committees (15320/07) and adopted the conclusions set out in [15497/07](#), defining common principles of flexicurity.

Future prospects for the European Employment Strategy in the new cycle of the Lisbon Strategy - *Council conclusions*

On the 10th anniversary of the European Employment Strategy, the Council endorsed an Employment Committee Opinion (15207/07) and adopted the conclusions set out in [15813/07](#), on the future prospects for the European Employment Strategy in the context of the new cycle of the Lisbon Strategy.

It was also informed by the Social Protection Committee's Chair about the report on mutual interaction between the common social objectives of greater economic growth and more and better jobs.

¹ "The European Council looks forward to the discussion on the Commission communication on flexicurity, which should be instrumental in preparing a range of flexicurity pathways to find the right mix of policies tailored to labour market needs including increased labour-market participation." (*Par. 18, 7224/07*)

² 10255/07.

Social services of general interest

Following the Commission communication accompanying the communication on "A single market for 21st century Europe" – "Services of general interest, including social services of general interest: a new European commitment", the Council held a policy debate, focusing, in particular, on the following issues:

- the contribution of a European framework to maximise the potential of social services in promoting social cohesion, employment, economic growth and specific issues that should be covered by any such framework;
- the specific features and nature of social services of general interest (SSGI);
- further steps to be taken at the European level in this field.

It was the first time that this topic was discussed at this level and work should proceed. Some of the ideas resulting from the debate might be summed up as follows:

- social services of general interest play a major role in the member states in the social and economic sectors;
- the organisation, financing, and territorial level of organisation of social services of general interest are very different from one member state to another. However, that diversity should not be an obstacle to the EU making a contribution to promoting social services of general interest. The open method of coordination has an important role to play in this respect.

The relevance of social services has been the object of Europe-wide debates¹. It is clear that there is an increasing overall awareness of the specific characteristics, nature and decisive importance of SSGI, which must be taken into account at the European level, while respecting national institutional traditions and policy options.

In particular, debates about SSGI² have highlighted the need to develop a coherent framework which is able to clearly define the founding elements, principles and scope of social services and their relationship to the broader framework of services of general interest and the internal market. This is precisely one of the main goals of the recent communication from the Commission³ on this topic.

A common understanding around such issues would be important for enhancing the role of social services at the European level, creating better conditions for supporting their quality, modernisation and adequacy in the future. The capacity for finding adequate and balanced solutions in this field would be crucial for successfully facing the new social risks and needs of EU citizens and the challenges faced by EU economies.

¹ A recent example is provided by the 1st Forum on Social Services of General Interest, organised, under the auspices of the European Parliament, by the Portuguese Presidency with the support of the European Commission, which took place in Lisbon (17 September 2007). It followed the recommendation of the European Parliament (Resolution A6-0275/2006 of 26 September 2006).

² 9038/06. The consultation process included the launch of a questionnaire by the Social Protection Committee.

³ 15650/07.

Coordination of social security systems

- **Implementing Regulation**
- **Content of Annex XI to Regulation (EC) No 883/2004**

Pending the European Parliament opinions at first reading, the Council agreed on partial¹ general approaches concerning unemployment and family benefits in draft Regulations that will:

- a) implement Regulation (EC) No 883/2004² (15512/07), and
- b) determine the content of its Annex XI (15514/07).

Regulation (EC) No 883/2004 was the first step in a process aimed at modernising and simplifying EU rules on the coordination of national social security systems, intended to allow EU citizens to move freely within Europe, while maintaining their rights to social security benefits (health, pensions, unemployment benefits, etc.). This process is being supplemented by the adoption of an implementing Regulation³, to replace Regulation (EEC) No 574/72 and of a Regulation which lays down provisions regarding specific aspects of individual member states' legislation, which will form the content of Annex XI to Regulation (EC) No 883/2004⁴. Those proposals are currently under examination.

Owing to the complexity of the file, and in accordance with the approach already adopted in discussions on the basic Regulation, it has been decided to aim for agreement on a chapter-by-chapter basis: for now, agreement would concern Chapters V (Unemployment benefits) and VI (Family benefits) of Title III and Chapter II of Title IV (Reimbursement of unemployment benefits).

Legal basis proposed: Articles 42 and 308 of the Treaty – unanimity required for a Council decision; codecision with the European Parliament applicable.

¹ Examination of the proposals will continue under the incoming Presidencies.
² Regulation of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30.4.2004, corrigendum OJ L 200, 7.6.2004.
³ See Article 89 of Regulation (EC) No 883/2004.
⁴ See Article 83 of Regulation (EC) No 883/2004.

Supplementary pension rights

The Council made progress towards reaching political agreement on a common position concerning a draft Directive regarding the minimum requirements for enhancing working mobility by improving the acquisition and preservation of supplementary pension rights (15515/07 ADD1, ADD3). However, following intensive discussions, it was recognised that the required unanimity could not be attained, certain issues remaining unsolved, in particular, the duration of the vesting period. Work on this file should continue under the forthcoming presidencies.

In a context where pension schemes established in the framework of an employment relationship – supplementary pension schemes – are becoming increasingly important for covering the risks of old age in the member states, the draft Directive aims to facilitate the free movement of workers, both between and within member states, by improving opportunities for those who change employers to acquire and preserve supplementary pension rights.

Legal basis proposed: Articles 42 and 94 of the Treaty – unanimity required for a Council decision; codecision procedure with the European Parliament applicable. The European Parliament delivered its opinion at first reading on 20 June 2007¹.

Active inclusion of people furthest from the labour market - *Council conclusions*

Following the Commission communication entitled "Modernising social protection for greater social justice and economic cohesion: taking forward the active inclusion of people furthest from the labour market", the Council adopted the conclusions set out in [15191/07](#).

¹ 10933/07.

Beijing platform for action - *Council conclusions*

The Council adopted the conclusions set out in documents [13947/07](#), on the review of implementation by the member states and the EU institutions of the Beijing platform for action, accompanied by indicators in respect of *women and poverty*, which is one of the 12 critical areas for action, and took note of the accompanying report by the Presidency (documents [13947/07 ADD1](#), [13947/07 ADD1 COR1](#)).

Follow-up of the European Year of Equal Opportunities for All (2007)

The Council adopted the Resolution on the Follow-up of the European Year of Equal Opportunities for All (2007) set out in document [15383/07](#).

Balanced roles of women and men - *Council conclusions*

The Council adopted the conclusions on balanced roles of women and men for jobs, growth and social cohesion set out in [14136/07](#), [14136/07 COR1](#) .

MIGRATION, EMPLOYMENT AND LISBON STRATEGY

In the margins of the Council, Employment Ministers met Justice and Home Affairs Ministers for a policy debate on migration, employment and the Lisbon Strategy.

The debate focused on two main subjects:

- Labour migration, integration into the labour market and the link to the Lisbon Strategy for Growth and Jobs, and
- Undeclared work and illegal employment as a pull factor for illegal immigration.

In the light of the debate, the Presidency concluded that:

- there is a close link between migration, employment and the Lisbon Strategy for Growth and Jobs. Well managed legal migration can continue to contribute to the realisation of the Lisbon Goals and should be aligned with skills shortages and labour market requirements;
- work should now be taken forward on the proposed Directives on the admission of third country nationals for the purpose of highly qualified employment and on the single application procedure and a common set of rights for legally residing third country workers;
- measures to promote integration are important, including in the area of skills and education and employment and social policies, as are the efforts of migrants themselves to integrate;
- combating illegal employment of third country nationals and undeclared work is equally important and dissuasive sanctions and effective enforcement can contribute to this. Work should therefore also be taken forward on the Directive on sanctions against employers of illegally staying third country nationals and on the follow-up to the Commission's Communication on undeclared work.

Background

Since the 1990s, positive net migration has become the largest component of population change in most Member States, reaching – over the last 5 years – a total of close to 2 million net migrants per annum across the EU.

Immigration flows towards Europe are not likely to diminish in the foreseeable future. The overall socio-economic context of the EU is increasingly characterised by skill and labour shortages (already noticeable in a number of sectors), competition for the highly skilled in an ever-more-globalising economy and accelerating demographic ageing of the European population, resulting in just a few years in the shrinking of the EU workforce.

As a follow-up to the 2005 Policy Plan on Legal Migration, the Commission submitted two legislative proposals on 23 October 2007: a Directive on the conditions of admission to the EU for highly-skilled workers and a Directive on the rights of legal immigrants in employment. These proposals are aimed respectively at making the EU attractive for an increasingly-needed category of workers and at ensuring that all third-country workers enjoy a comparable level of rights throughout the EU. The latter proposal also provides for a single application procedure with a view to obtaining a single permit encompassing both a residence and work permit. Three further proposals will be submitted in autumn 2008 and will cover the admission of seasonal workers, intra-corporate transferees and paid trainees.

The Commission also submitted a proposal for a Directive providing for sanctions against employers of illegally resident third-country nationals in May 2007. The aim is to ensure that all Member States introduce similar penalties for employers of such third-country nationals and enforce them effectively. It is proposed to require employers to undertake checks before recruiting a third-country national and to require Member States to conduct a minimum number of inspections of companies established in each Member State.

HEALTH**Health and Migration in the EU - *Council conclusions***

The Council held a policy debate on health and migration in the EU, focusing, in particular, on the following issues:

- Integration of migrant's health issues into national policies, using the "Health in All Policies" approach;
- Access to health care for migrants;
- Paths already pursued by Member States; successes achieved and difficulties encountered;
- Suggestions to sharing knowledge, relevant experience, good practice and lessons learnt on effective intervention.

At the end of the debate, it adopted the conclusions set out in [15609/07](#).

EU Health Strategy - *Council conclusions*

The Council held a policy debate on the Commission's White Paper "Together for health – a strategic approach for the EU, 2008-2013"¹, focusing, in particular on the following issues:

- EU Health Strategy's priority themes and their reflection in the development and implementation of national health policy objectives;
- Relevant experiences on priority setting, implementation and monitoring and their possible use for the implementation process of the EU Health Strategy;
- Identification and implementation priority actions: role of the Member States and the Commission in this process.

At the end of the debate the Council adopted the conclusions set out in [15611/07](#).

¹ 14689/07.

Organ donation and transplantation - *Council conclusions*

Following the Commission communication "Organ donation and transplantation: policy actions at the EU level"¹, the Council adopted the conclusions set out in [15332/07](#).

Strategy for Europe on nutrition, overweight and obesity - *Council conclusions*

Following a brief exchange of views welcoming the Strategy presented by the Commission in its White Paper and actions envisaged therein, the Council adopted the conclusions set out in [15612/07](#).

Combating HIV/AIDS within the EU and in neighbouring countries

The Council noted the progress report presented by the Presidency (doc. [15338/1/07](#)).

This represents a follow up to initiatives taken by the German Presidency as part of the implementation of the Commission Communication, in particular the adoption of Council conclusions on 31 May 2007.

¹ 9834/07.

OTHER BUSINESS

– Information from the Presidency

- (1) Events organised during the Portuguese Presidency
 - (i) Conference of Experts on "Employability and Entrepreneurship – Gender Stereotypes" (3 and 4 October 2007) - [15971/07](#)
 - (ii) Conference on "Trafficking in Human Beings and Gender" (8 and 9 October 2007) - [15972/07](#)
 - (iii) 6th European Round Table on Poverty and Social Exclusion. Minimum Social Standards: a Strategy for Protection and Empowerment (16 and 17 October 2007) - [15973/07](#)
 - (iv) ILO Forum on Decent Work for a Fair Globalization (31 October, 1 and 2 November 2007) - [15976/07](#)
 - (v) Conference on "The Paths of Sustainability and the Reform of Pension Systems" (13 and 14 November 2007) - [15978/07](#)
 - (vi) Closing Conference of the European Year of Equal Opportunities for All - 2007 (19-20 November 2007) - [16012/07](#)
- (2) Draft Council Resolution on new skills for new jobs (Education, Culture and Youth Council)
- (3) Information on the Presidency's Conferences on Health - [15781/07](#)
- (4) Environment and Health - [15785/07](#)

– Information from the Commission

- (5) Communication from the Commission "Opportunities, access and solidarity: towards a new social vision for 21st century Europe" - [16052/07](#)
- (6) Communication from the Commission – Outcome of the Public consultation on the Commission's Green Paper "Modernising labour law to meet the challenges of the 21st century" - [16053/07](#)
- (7) Community framework on health services
- (8) Strategy on mental health for Europe - [15788/07](#)
- (9) Health Security related matters - [15789/07](#)
- (10) Commission's High Level Group on Health services and Medical care - [15790/07](#)
- (11) Framework Convention on Tobacco Control - [15916/07](#)

OTHER ITEMS APPROVED

None.
