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Green Paper on modernising labour law to meet the challenges of the 21st century

Please find the reply by the Confederation of Danish Employers to the questions raised in the Commission green paper on modernising labour law.

The Confederation of Danish Employers (DA) represents 13 employers' organisations, covering manufacturing, retail, transport, services and construction sectors. As the main organisation for private employers in Denmark, DA co-ordinates collective bargaining negotiations and represents the member organisations interests towards the political system in Denmark and internationally.

General remarks

In Denmark – as in the rest of Europe globalisation works in many ways. Jobs have been lost and equally gained. To stay competitive, companies might use outsourcing as a long term investment and thereby generate growth and new employment opportunities in Denmark. Globalisation is perceived as an opportunity for all – not a threat. The reason is rooted in the combination of a flexible labour market and the partnership between employers, workers and the political system.

DA welcomes the green paper on modernising labour law and the debate on how labour law should evolve in order to ensure higher growth and more and better jobs in Europe.

The green paper gives a balanced analysis of the challenges facing the European labour markets. Nevertheless, the questions and the argumentation still reflect a rather traditional attitude to modernizing and regulating the European labour markets including the multitude of contractual arrangements.

One key aspect for the European institutions, national governments as well as social partners will be to promote labour market flexibility on all levels by focusing on employment security, creating new jobs as opposed to job security and preserving existing unsustainable jobs.

There is no single social model in Europe, but a multitude of different ways to create growth, employment and security. Though we share common values, and the internal market presup-

poses that European and national policies becomes increasingly intertwined; labour law, industrial relations and employment policies remain first and foremost a national competence.

As acknowledged by the European Spring Council in March 2007, the exchanges of best practices and open coordination with common goals and benchmarks is becoming a very powerful tool in taking Europe forward and modernising the national labour markets in accordance with national and local needs. 27 Member States and as many labour market systems challenge the community method. A future role of the EU should be to monitor national reforms and push forward the Lisbon-strategy ensuring labour law rights do not lead to obstacles to mobility and job creation.

The flexicurity approach

Especially for small and medium-sized enterprises, flexicurity is an essential element in their ability to generate jobs and growth.

The green paper looks at different ways of advancing the flexicurity agenda which DA welcomes. What is important is to develop a national policy-mix which facilitates job creation and adaptability.

The Commission tends to perceive the Danish flexicurity approach as a reform model. The Danish flexicurity is not only a reform model, but is a result of a long tradition of labour market regulation through social dialogue and is fully integrated in the political processes.

The green paper gives a rather negative and unjustified picture of the emerging flexible work forms. In line with flexicurity, national labour law reforms should improve flexibility in the normal contract worker-employer relationship, rather than introduce restrictions on the more flexible forms of worker-employer relationship. A division of the labour market in insiders and outsiders is wrong and not in accordance with the flexicurity approach. Both companies and workers want and demand increased flexibility and the availability of different forms of work reconciling work-life balance and responding to market changes. Instead focus should be on companies' and workers' efforts to adapt to change through flexible work relationships. Workers protection should become less dependant on traditional labour law instruments and instead focus more on education and training measures and of life long development of skills and qualifications.

Question 1

As already mentioned, the priorities for a meaningful labour law reform agenda are to find new ways of providing security in the labour market combined with increased flexibility. Focus should be on active labour market policies, thus creating new jobs, instead of protecting unsustainable jobs at all social costs. Workers protection and employability should also rely more on life long learning measures instead of labour law regulation. This is mainly the responsibility of the Member States and the social partners.

The reform agenda should be based on the flexicurity approach, recognizing flexibility as a precondition for growth and job-creation, and as a way to improve employment security. On EU-level, the flexicurity approach should be used as a mainstreaming tool for future labour

market policies. The development of different pathways to enhance flexicurity could be an important tool for Member States reform programs.

Question 2

Yes, this is the essence of flexicurity, but depending on their set-up, labour law and collective agreements can also be an obstacle to flexibility and employment security. However, the question is mainly a national issue. The EU-level should respect the national systems, their differences, and avoid adverse interferences in national negotiations. It is also important that EU-regulation provides freedom for national social partners to negotiate national or local solutions which ensure sufficient flexibility for both workers and companies. The social partners on European level can also play a significant role in promoting employment security and reducing labour market segmentation through their social dialogue given the Commission respect the autonomy of social partners.

Question 3

The Danish labour market is characterized by a high degree of continuous social dialogue on all levels and on a wide range of issues related to the work place or the labour market. Both the centralized collective bargaining system and the company-based agreements contribute to a more responsive and flexible labour market, where globalisation is perceived as an opportunity by both workers and companies. The social partners seek to find on-the-spot solutions to either local or global problems. However, we have often observed European legislation restraining Danish companies or workers flexibility, e.g. the working time directive.

In the future, EU will have to promote policies and framework laws which encourage employment creation, rather than restrictive protections laws. More flexibility is needed in the traditional work relationship/standard contract in order to ensure employment and especially better job opportunities for those groups being marginalized or being in risk of marginalization.

Reforms aimed at simplification of the regulatory and administrative procedures will be particularly beneficial for SME. As a basic principle, regulations should always be functioning smoothly in all companies irrespective of their size.

Question 4

The green papers definition of insiders and outsiders is not justified or useful. All those working, either part-time, fixed contract, agency workers etc. should be considered as insiders. Furthermore, part-time work should not be labelled as “precarious work”. Several directives protect the “non-9 to 5 life-time workers” against discrimination. The real outsiders are those people out of employment. The main issue is to start removing the rigidities in indefinite duration contracts and to address the real causes of companies’ use of alternative work contracts, rather than impede job creation by introducing further restrictions in the use of non-permanent contracts.

An important element in the Danish flexicurity approach is the relatively flexible and liberal rules for recruitment and eventual dismissal of staff. A high degree of flexible labour regula-

tions ensure a better use of the labour force competences and counteract labour market segmentation.

Question 5

From a Danish point of view, flexicurity includes flexible contractual labour market policies, a balanced social security system, active labour market policies, and legal certainty. All four components are mutual dependant. A high level of flexible policies promotes higher employment rates among e.g. younger and older people, increases the social cohesion, and reduces long term unemployment as companies are more inclined to recruit. As already mentioned, there is a need for more flexible employment protection policies and more efficient incentives and assistance to the real outsiders - the unemployed in order to get them back into the labour market.

The role of the Commission is to encourage the Member States to introduce the necessary changes and organise exchange of good practices. The European Employment strategy is an important tool in pushing forward the flexicurity agenda in accordance with national traditions and needs.

Question 6

Job mobility and training are core aspects of the Danish flexicurity policy, where the social partners through collective agreements promote education, and training on the job and outside the company in various schools and universities. The goal is to upgrade the skills of the workforce in accordance with the need of the companies in order to stay competitive in a global market place.

Agreements between the social partners can play an important role in fostering lifelong learning. In Denmark, a tripartite committee in 2006 analysed the future financing and organization of strengthen adult education system and lifelong learning. The access to training and co-financing of training activities together with the public authorities have been an important issue during the collective bargaining negotiations in 2007.

Question 7

There is no need for or justification of legal definitions of employment and self-employment on European level. Employment whether in the context of an employer or self-employment is closely related to, and dependant, on the national labour market systems, tax and social security rules. A common definition or a move to clarify national definitions will create more problems than it will solve or will in fact lead to a discussion on e.g. harmonization of tax systems and social security rules.

Furthermore a move towards a common definition of employment and self-employed might hinder entrepreneurship and job creation and is in opposition to the flexicurity-thinking.

The problems that might exist shall be solved nationally.

Question 8

There is no need for a common “floor of rights”. The national constitutions and traditions of the Member States, the Treaty and European Charter of fundamental rights, the European Convention on human rights as well as instruments, e.g. in the United Nations and ILO all ensure a minimum set of rights for all workers as also do the Court of Justice, The European Court of Human Rights and national Courts and other bodies in their rulings.

Adding a further statutory “floor of rights” on European level will not give more legal certainty, and might even contribute to further segmentation in the labour market. It would have a negative effect on job creation and is a move towards rigid rules which discourage the flexicurity approach. In general, terms and conditions and security of employment of workers are best defined by the Member States and the social partners.

Question 9

In a Danish context there is no need of such rules or clarifications. Moreover, it would off-set the free contract law and have repercussions on labour law, industrial relations and company law.

Question 10

No. The employment conditions of agency workers are best regulated by the national social partners. The draft directive on agency workers does not live up to the flexicurity-approach.

Question 11

In Denmark working time is regulated by the social partners and is characterized by a high degree of flexibility for both companies and workers. The blocked draft proposal indicates that detailed regulations on entirely national issues should not be dealt with on a European level, or if so, then only in terms of a framework directive. As part of the better regulation strategy the Commission should repeal the directive. The decision of the Court has revealed the impossibility of a one-size-fits-all European solution to regulating working time.

Question 12

As already mentioned in the response to question 7, DA believes this is a national issue and sees no need for European action. On the contrary, in relation to workers operating in transnational context there might be a need to improve the employment opportunities and incentives. To ensure and promote the free movement of workers within the Union, access to information about their opportunities is a key issue. In this respect the European institutions can play a bigger role. Cooperation between national authorities is as well important in order to give these workers a clear and updated view of their opportunities.

Question 13

Effective enforcement of existing Community-law lies in the hands of national authorities. In Denmark the social partners plays an important part in implementing and enforcing Commu-

nity-law. However, the EU can assist national authorities in organising exchanges of experiences.

Question 14

Real actions in fighting undeclared work can only be taken on national level by the Member States. The EU can play a useful role by assisting in exchanges of good practices.

Final remark

DA would like to draw attention of the Commission to the Danish translation of the green paper. It appears as if there is some kind of misunderstanding or misinterpretation of the concept of job security ctr. employment security thus giving the reader a false impression of the political analysis made by the Commission. The Danish government is also aware of this problem.

Yours sincerely,
CONFEDERATION OF DANISH EMPLOYERS

Dorthe Andersen