



A labour law striving for an inclusive
and prosperous society

**Response of the Social Platform to the Green Paper:
Modernising Labour Law to meet the challenges of the 21st century**

30 March 2007

Our key messages:

- In the context of a global economy the prime responsibility of public authorities is to ensure that labour law offers an effective protection of individual and collective rights.
- The debate on labour law reform should not be overwhelmed by the objective of increasing flexibility only, but provide ways to progress towards flexicurity patterns likely to be agreed by, and to benefit the whole society.
- Labour law must promote regular employment relationships and limit the variety of atypical employment status to ensure a clear and transparent situation.
- Reforms in employment should aim at improving rights for those in precarious employment, not reducing rights for those with permanent jobs.
- A compulsory and adequate first pillar pension system remains the most efficient way to deal with frequent job changes and career interruptions while at the same time securing adequate income in old age.
- Labour law must guarantee reasonable and predictable working time for both women and men to ensure the conciliation between work and private life.
- To fight growing poverty, labour law must enshrine the right to a minimum wage indexed to the costs of living and in particular to housing costs.
- In order to overcome persistent gender discriminations at work (including the gender pay gap) in an efficient way, equal pay legislation, policies on equal opportunities between women and men as well as relevant wage policies must be accompanied by affordable, accessible and high-quality care for dependent persons.
- Labour law should support active policies and positive actions bringing the most marginalised groups back into employment. Activation policies should be respectful of individual's human rights and provide access to adequate income, social protection and to quality services. Positive action, including tax incentives for employers, to recruit certain categories of workers in a sustainable way, should also be encouraged.
- Tailored-made patterns of flexibility can be essential in providing a way back into employment. Adapted timetables and working conditions can provide opportunities for people from marginalised sections of society, in particular women, people with long-term sicknesses, people with disabilities, those with mental health problems or older people to integrate the labour market.
- Labour laws should be enjoyed regardless of legal or immigration status.
- All the above would remain useless if national administrative supervision is not reinforced to be able to guarantee the full implementation and enforcement of labour law securing individual and collective rights of workers.
- The fact that currently the adoption of key directives in the social field is blocked (temporary agency, working time, and portability of pension rights) needs to be actively addressed to reinforce the credibility of the EU.

► Introduction

Social NGOs actively follow the European employment policy and welcome this debate on labour law reform. The objective of Social NGOs is to provide a different perspective to the discussion by voicing the concerns of people who encounter difficulties in the labour market. These people are far from being a minority or a marginal group. On the contrary, they include large sections of society such as: women; ethnic minorities forced into poor quality jobs or undeclared work because of discrimination; families and individuals struggling with atypical working time and insufficient support and/or care services for their dependent relatives; young people or older people hugely affected by unemployment; disabled people confronted with a lack of adaptability in the workplace; or migrant workers living in slave-like conditions in the European Union.

Based on this reality, Social NGOs defend a multidimensional approach to employment to fully address the complexity of these individual situations. The debate on labour law reforms should be part of this integrated approach and help to raise issues such as the fight against discrimination on the labour markets, the universal right to social protection and minimum income, and the need to invest in services of general interest.

For Social NGOs, the main function of labour law is to protect efficiently individual and collective rights and to promote fundamental values. There is also a collective responsibility to promote economic activities, not as an end in themselves, but as a contribution to the well-being of individuals and to society as a whole. Public authorities' prime responsibility is therefore to ensure that, in the context of a global economy, labour law offers an effective protection of individual and collective rights. Building a cohesive society is in the interest of all since such a society is more likely to be favourable to growth.

This shows that the reform of labour law is not a technical debate but a societal debate. The Social Platform is convinced that the prosperity of a society goes hand in hand with the priority given to the realisation of each individual's full potential. Empowered women and men, whether active in the labour market, in voluntary activities or simply as individuals, are more likely to be drivers in terms of social, economic, cultural, political or scientific innovation than individuals who are living under the mere pressure to accumulate wealth, goods and profits.

The Social Platform therefore thanks the European Commission for opening the debate on labour law but regrets the way the consultation was launched. For Social NGOs the Green Paper puts too much emphasis on the alleged requirement of modern economies with insufficient critical analysis and emphasis on general interest and values. The Social Platform also regrets the technical nature of the questionnaire which has clearly limited the involvement of national and local NGOs even if this issue is clearly fundamental for them. To foster the development of a Social Europe, the debate at this stage should highlight the need for a quick adoption of the key directives¹ in the field of labour law that are currently blocked, and seek to reach political commitment for progress at the EU level. It is also crucial that the public debate is open up and structured at national level on this issue.

Discussing the reform of labour law, all current EU initiatives need to be taken into account. The Green paper should therefore also refer to an initiative currently drafted by the European Commission, namely the forthcoming proposal for a directive on 'minimum sanctions for employers of illegally resident third-country nationals'. EU developments in relation to employment should also be designed in conformity with EU international commitments and, in particular with the ILO's decent work agenda, in its full acceptance.

We are also conscious that this consultation is part of the flexicurity debate, with regard to which we demand a balanced approach. In this respect the debate on labour law reform should not be

¹ Amended proposal for a [Directive on working conditions for temporary workers](#) (Brussels, 28.11.2002), Amended proposal for a directive amending Directive 2003/88/EC [concerning certain aspects of the organization of working time](#) COM (2005)246, or portability of pension rights

overwhelmed by the objective of increasing flexibility only, but provide ways to progress towards flexicurity patterns likely to be agreed by, and of benefit to, the whole society. This is a key concern for Social NGOs when increased flexicurity seems to be given strong priority in some national contexts, and is pressingly asked for by business interests. The Social Platform supports the German Presidency's conclusion that "Regular employment relationships are indispensable. They provide security and strengthen competitiveness in a sustainable manner. The Member States are called upon to strengthen standard working relationships in accordance with their national practice and to limit their circumvention by atypical employment relationships"².

In addition to the Social Platform's common contribution, some members of the Social Platform such as EAPN, AGE, FEANTSA, EYF, Solidar, CECOP, Eurodiaconia or EASPD have developed their own positions. Their contributions will be displayed on the Social Platform's website.

► Key points of the Social Platform on labour law reform

1) Labour law must guarantee equality of rights for all people active in the labour market regardless of their employment status

- The rights guaranteed by labour law must apply equally to all people active in the labour market, regardless of their employment status. Labour law reform must follow the approach taken by the directive on temporary agency workers. This directive states that the basic working and employment conditions applicable to temporary workers should be at least equal to those which would apply to workers recruited to occupy the same job.
- Labour law must also ensure an equal access to training and life-long learning to all, including unemployed women and men, and to people who decide to take a career break.
- Labour law must promote regular employment relationships and limit the variety of employment status thus ensuring a clear and transparent situation. In a protective approach, rights and obligations governing internship or apprenticeship should also be defined.

2) All people should be entitled to social protection and a minimum income

- The right to social protection and to a minimum income should be disconnected from employment records and guaranteed to all individuals as a fundamental right.
- Labour law must integrate a compulsory and adequate pension system for all individuals regardless of their employment status. Indeed, a compulsory and adequate first pillar pension system, based on the individualisation of rights, remains the most efficient way to deal with frequent job changes and career interruptions while at the same time securing an adequate income in old age.
- Periods of maternity, paternity and parental leave, career breaks and part-time employment (in particular in order to fulfil caring responsibilities for dependent people) should be included when calculating pension and insurance entitlements.
- Social protection and minimum income have to enable citizens to choose between employment, training and socially meaningful activity.

² Conclusion n°5, Informal Meeting of Ministers for Employment and Social Affairs Berlin, 18/20 January 2007 Presidency's Conclusions drafted in Cooperation with the two Following Presidencies Portugal and Slovenia

3) Labour law must aim at improving the quality of employment in all sectors of the economy

- Labour law reforms must support the various facets of quality employment³ including in particular: intrinsic job quality, career and employment security, health and safety at work, protection against stress and harassment, development of skills and lifelong learning, social dialogue and workers' involvement in work organisation and work-life balance, gender equality, non-discrimination, diversity, inclusion and access to the labour market, and adequate social infrastructures.
- Labour law must apply equally to all sectors of the economy. Collective bargaining can provide additional rights but sectors where workers are traditionally less organised should receive extra attention from public authorities. Those sectors which are traditionally less organised, such as domestic work or care, are often predominantly serviced by the most vulnerable workers, such as undocumented migrants or women from ethnic minority backgrounds.

4) Labour law must enshrine the right to a fair remuneration and fight poverty

- Labour law must guarantee fair and adequate remuneration. The reality today is of a growing population of working poor and of families who cannot survive without a dual income. Single parent families or families caring for a dependent relative are particularly vulnerable to poverty because of the loss of income. Living on or below the poverty line is an unacceptable denial of fundamental rights⁴, and has multiple effects on peoples' personal lives. It drastically limits the chances of the people concerned to participate actively and meaningfully in society. Therefore labour law, in coordination with social protection systems, must fight against poverty.
- The right to a fair remuneration includes the need for labour law to fix a minimum wage. However the minimum wage needs to be indexed to the cost of living and therefore accompanied by other relevant social measures, for instance housing in expensive urban markets. This is particularly relevant for capitals or big cities which offer more employment opportunities but where the housing market is often inaccessible for those on a low-income.

5) Labour law must more effectively fight discrimination against all people

- Labour law must guarantee the full implementation of European and national legislation promoting anti-discrimination legislation on the labour market. Labour law must support effective mechanisms guaranteeing equal opportunities for all in the workforce i.e. non-discrimination in recruitment procedures, access to promotion and training as well as proper protection from victimisation when people claim their rights.
- However, the fight against unemployment must not lead to or reinforce discrimination and segmentation. For instance labour law reforms such as the French "*Contrat première embauche*" were meant to fight against the high level of unemployment among young people but would in practice have generated new forms of discrimination (for instance a longer trial period of up to two years and the possibility of being dismissed without any justification).

³ In this regard the Social Platform welcomes a promising step towards quality employment the last European Council presidency conclusions which "stress the importance of "good work" and its underlying principles, i.e. workers' rights and participation, equal opportunities, safety and health protection at work and a family-friendly organisation of work (German Presidency Conclusions – Brussels 8/9 March 2007).

⁴ Article 30 of the European Social Charter states that "Everyone has the right to protection against poverty and social exclusion". The parties undertake to take measures (...) to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance".

- Labour law must develop and generalise positive measures in order to promote the practice of hiring and integrating into the workplace of people who are discriminated against in terms of their access to the labour market, including those furthest from the labour market.
- Labour law must ensure a better recognition of the qualifications and diplomas and the potential of migrant workers in all working areas. Recognition of qualifications is particularly relevant for migrant workers since many of them are over qualified and face de-skilling due to problems related to recognition of qualifications. The proposed European qualifications framework is an important tool in this regard.

6) Labour law must ensure work-life balance

- Labour law must guarantee reasonable and predictable working time (daily/weekly) for both women and men to ensure the conciliation of work and private life.
- Individuals active in the labour market must be given the opportunity to participate individually and collectively in the definition of patterns of working time. For many workers flexibility can reduce barriers to the labour market by allowing them to work in a way that better suits their needs. For example, people with caring responsibilities (often women) or older people who wish to retire gradually rather than taking 'cliff-edge' retirement are all likely to benefit from increased flexibility in terms of working hours or part-time contracts. For other people, flexibility can be essential in providing a way back into employment.

7) Labour law must secure equality between women and men and address the issue of care for dependent relatives

- Despite the existence of a full set of legislation on equality between women and men in employment, discrimination based on gender is still widespread. It is therefore necessary to ensure the full implementation and enforcement of European gender equality legislation at national level through a concrete set of actions directed to potential victims of discrimination, employers, and legal and justice professionals.
- Labour law must not only state but also guarantee and enforce with effective mechanisms the implementation of equal pay for equal work or work of equal value.
- It is essential to develop a framework of work where all parents can assume family responsibilities, with a more flexible and innovative organisation of work, allowing women to effectively choose to work full-time if they wish so. A majority of women are constrained to work part-time, which generates strong inequalities during the life-cycle (absence of career prospects, pension and pay gap). Equal pay legislation, equal opportunities policies and relevant wage policies must therefore be accompanied by affordable, accessible and high-quality care for dependents persons. This support can take a different shape: time credit to care for dependent people, holiday rights or unpaid leave. Particular support for single parent families – mostly headed by women – needs to be taken into consideration in the definition and implementation of labour law.

8) Labour law must facilitate sustainable access to employment of some of the people furthest from the labour market.

- Even if work is not an option for all people suffering from social exclusion, access to work, education, training and life long learning must be guaranteed to all. Labour law should also be part of an integrated strategy, designed and implemented with the participation of people

experiencing poverty. It would build pathways to employment respecting the specific needs of these people. In this objective, particular attention should be given to initiatives in the social economy promoting work integration.

- Active policies respectful of human rights and dignity to help the most marginalized groups back into employment are also needed. They require a good coordination between labour law and social protection systems. A lack of coordination between both can have detrimental effect on people who take up employment, as is the case for disabled people who often lose their entitlement to disability benefits when they accept a job. Tax incentives for employers to employ certain categories of workers should also be encouraged.
- For some people, tailor-made patterns of flexibility can be essential in providing a way back into employment. Adapted timetables or working conditions can provide opportunities for people with long-term sicknesses, people with disabilities, those with mental health problems or older people to integrate into the labour market.

9) Labour law must be apply to all independently of immigration status

- Labour law must guarantee the basic fundamental rights of all workers (right to organise, fair labour conditions, social protection, health insurance, minimum income, equal treatment), regardless of their status or their nationality. This protection should include asylum seekers and undocumented migrants. All individuals residing in the European Union territory are subject to fundamental rights at work, as acknowledged in the European Charter of Fundamental Rights⁵ and in other international instruments. The lack of enforcement of these rights contributes to exploitation and modern slavery, in particular of undocumented migrant workers.
- Labour law must strengthen the role of labour inspection in its primary duty of protecting workers and not enforcing immigration law, so that undocumented workers can safely file a complaint against an abusive employer without being threatened with deportation.
- EU immigration policy must secure to migrant workers, their partners and their relatives, residency permit independent from their work permits. This should allow migrant workers to change their employer or to move into a different sector of employment without difficulty.

10) Labour law must be better enforced both at European and national level

- The fact that currently the adoption of key directives in the field of labour law is blocked (temporary agency, working time and portability of pension rights) needs to be openly addressed to reinforce the credibility of EU social policy.
- National administrative supervision must be reinforced to be able to guarantee the full implementation and enforcement of labour law securing the individual and collective rights of workers. Currently many national labour inspections are understaffed and cannot ensure the effective implementation of labour law. This issue needs to be addressed openly and tackled efficiently.

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⁵ See in particular articles 27 to 35, Chapter IV on Solidarity of the European Charter of Fundamental Rights