ETF position on the Commission’s Green Paper

“Modernising labour law to meet the challenges of the 21st century”

1. The European Transport Workers’ Federation (ETF), representing more 2.5 million workers in all transport sectors and fisheries organized in 226 affiliated trade unions from 40 European countries responds with the present document to the Commission’s consultation on the Green Paper “Modernising labour law to meet the challenges of the 21st century”.

2. As a preliminary remark the ETF regrets that no differentiated process is foreseen vis-à-vis the consultation of social partners at European level. By putting all contributions at the same footing the Commission sends a clear signal of its will to dilute, in the wider consultation frame, any possible different views on a core issue for workers’ organizations.

The Commission misses the target

3. The Commission departs from the understanding that existing labour laws are too stringent, outdated and overly protective and therefore alternative models of contractual relations would have to be developed.

It lets understand that the current models by not providing the “necessary” flexibility for businesses to hire and fire, hinder access to the labour market for those looking for a first job and the so-called outsiders, in the benefit of the insiders, those who have a permanent contract.

4. The ETF strongly rejects the Commission’s approach which would lead to a downgrading of the existing employment legislations, thus putting an end to the existing differences between insiders and outsiders in a singular manner: workers would all be treated as outsiders!

5. The core objective of labour law is not to promote business and market efficiency but rather to set the balance in the unequal position of employers vs. workers in their relation in the labour market and the work place. This is complemented by collective bargaining which is another important tool of guaranteeing a common set of minimum rules for employment protection and decent working and living conditions. Trying to argue that this view is outdated given the diversity of new forms of work in the labour market, is not serious. The principles of equality, solidarity and social cohesion remain fundamental to any discussion on possible developments in labour law. More than ever there is a need for strengthening employment protection.
Illegal employment practices became a routine

6. The main objective of this exercise lays in the quantity of employment in detriment of the quality of employment: the Commission tries to get ride of what remains from the social pillar of the Lisbon Strategy where the objective is to create more and better jobs. It pursues the so much repeated thesis that more flexibility of the labour market would boost productivity and competitiveness which would favour the creation of jobs… The experience tells us that this is often not the case and the current trends with the spreading of different forms of “casino capitalism” are there to prove that profit is the only goal.

7. On the other hand, in the last years trade unions have been involved in promoting possible ways of protection for those workers who are not covered by permanent contracts: part time work, casual work, fixed term or temporary contracts, telework, etc. Often those contracts are imposed on workers in disrespect of the national legislation, with the passive acceptance from national authorities by lack of action from labour inspection. In fact, the question of recruitment should not depend on labour law: the employer needs either to recruit a full time or a part time worker, or to apply a permanent or a fixed term contract. The problem is that the main objective for many employers is to find the cheapest way, even if eluding the law, to engage or dismiss workers. The fact that these practices have become a routine in several countries, should not justify their acceptance and regularisation.

8. There is no evidence that flexible forms of employment benefit the disadvantaged. Indeed “atypical” forms of employment, including agency work, are being exploited by many employers, whose objectives are on the short term profit without any concern for the good of the economy or the workers.

9. Transport and fisheries’ workers are no exception in being subject to different forms of “atypical” work and contracts. The examples of discrimination, fake independents, bad working conditions, non-compliance with the EU and national legislation, are multiple in road transport, shipping or maritime fisheries, just to mention some.

Full speed ahead for more flexibility, no reference to strengthening security

10. It should also be noted that whilst the Commission extensively refers in the Green Paper to the need for further flexibility and the promotion of the flexicurity concept, there is a lack of references to further security and social protection.

11. The ETF advocates that security plays a fundamental role in employment, together with adequate initial and life-long training. By leaving to the Member States the responsibility of ensuring more and better social protection, the Commission “hides its head under the sand” to the reality of a vast majority of Member States which are not in a position to allocate the necessary resources to ensure proper levels of security, protection and training.

12. The Commission approach goes in the sense of weakening existing permanent labour contracts, legalising fake independent work, generalise precarious work under the argument of creating jobs, lower labour and social protection costs in detriment of the workers. While promoting the adoption by Member States of flexicurity models, the Commission fails to explain how Member States are expected to cope with the significant additional costs they would have face in order to ensure adequate levels of income and training for those workers in need.
13. What is more, after the wave of liberalisation the Commission has imposed, namely on different transport sectors, the flexicurity approach tries to prepare the next phase where, following compulsory calls for tenders, workers from companies which will lose their concession would find themselves left to the exclusive responsibility of Member States, thus exonerating companies from their social and contractual responsibilities.

14. The ETF calls therefore for the revision of the directive on transfer of undertakings in order to include in its scope the protection of employment in cases of calls for tenders, by enabling the inclusion in the tendering process of the obligation of the winning bidder to employ the workers of the departing company.

**Strengthening employment legislation**

15. In conclusion, the ETF considers that the Commission has taken the wrong approach on the needs of the European labour market. ETF is strongly convinced that training and innovation are key to the European competitive advantage in the world economy and the best way to achieve that is through secure work places, where labour is dignified and not seen as an asset, workers and their organisations have a voice, collective bargaining is respected and promoted and social dialogue works as an added value.

16. In preparing its next Communication, the Commission should rather look into a reform of labour laws aiming at ensuring a better distribution of wealth; respect of core labour rights, including the right for association; more security at work and better working conditions; effective initial and life-long training programs; efficient collective bargaining systems; equality of treatment for all workers, including “economically dependent” and migrant workers.

Approved by the ETF Executive Committee

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