GREEN PAPER:
Modernising labour law to meet the challenges of the 21st century

Comments from Eurocarers

Eurocarers is a European organisation with the aim to advance the interests of carers and represent and act on their and their organisations’ behalf, irrespective of the particular health need of the person they are caring for.

Carers provide unpaid care by looking after an ill, frail or disabled family member, friend or partner, outside a professional or formal framework.

Among the principal aims of Eurocarers are

1. exchanging, gathering and disseminating experience, expertise and good practice and innovations,
2. contributing to policy development at national as well as European level by acting as a voice for carers and advocating on issues relevant to carers, supported by evidence-based research.

This short paper sets out our response to the consultation on the Green Paper on modernizing labour law. The various headings reflect the structure of this Green Paper.

1. Introduction – the purpose of this Green Paper

Eurocarers welcomes this paper, which launches an inclusive EU wide public debate (i.e. beyond the EU social partners) on how labour law can support the Lisbon Strategy’s objective of achieving sustainable growth with more and better jobs.

We fully agree that it is time to reconsider and review labour law, given current developments and challenges (e.g. demographic ageing), which directly impact on the EU labour market as well as on society as a whole.

In this context, Eurocarers would like to draw the attention to (potentially) conflicting policy needs, both partly stemming from demographic ageing, which need to be reconciled if the economic and social objectives of the Lisbon Strategy are to be met. On the one hand, there is an economic need to increase labour market participation in order to keep national social security systems financially sustainable. Specific and explicit targets for raising the number of women (and older workers) in paid employment have been set as part of the Lisbon Agenda. On the other hand, the growing number of frail older people is rapidly leading to an ever growing need for care provision, which puts pressure on national health and social security budgets.
In this respect, Eurocarers would like to underline that most of the care is provided by relatives, friends and neighbours (predominantly women), and it can be argued that this form of care is the foundation of formal health and social care systems. In other words, carers are an inherent and indispensable part of long-term care provision and of the organisation and sustainability of care systems.

This increasing need for care occurs in parallel with other demographic developments, which have a profound impact on the amount of care available:

- changes in composition and size of families, leading to smaller numbers of children to provide care,
- increasing mobility, leading to relatives living at greater distances, rendering care provision more difficult,
- the increasing number of women entering the labour market

From the above, it is clear that the provision of unpaid care is under great (and increasing) pressure. If carers are to continue to care, active measures will need to be taken in the short term in a number of policy areas – including labour law.

We are therefore pleased to note the Green Paper’s emphasis on ‘flexicurity’ i.e. the need to combine flexibility with employment security. According to the Paper, flexicurity also entails life-long learning, active labour market policies encouraging unemployed or inactive people to have a new chance in the labour market, and flexible social security rules, taking account of those switching between jobs or temporarily leaving the labour market. The latter specifically applies to carers, who often leave paid employment in order to provide care to individuals in need of care, in many cases because the combination of formal employment and care responsibilities proves to be too heavy.

In this context, it is useful to also focus on older workers, who stop working because of their caring responsibilities. Existing flexicurity measures do not take the difficulties, faced by for older workers when wanting to return to the labour market into account; age discrimination remains a concrete barrier to reintegration;

2. Labour law in the EU – the situation today

a. Developments in the Member States

The Paper states that technological progress, global competition, changing consumer demand and significant growth of the services sector have shown the need for increased flexibility. This is reflected in variations in work organisation, working hours, wages, and workforce size at different stages of the production cycle.

Eurocarers welcomes the recognition of this need, as more flexible working conditions will be one of the main prerequisites for facilitating and ensuring the provision of unpaid care.

3. The key policy challenge – a flexible and inclusive labour market

In this chapter, the Paper addresses different contractual forms which have emerged: “workers are also afforded greater choice, i.e. working time, increasing career opportunities, a better balance between family life, work and education and more individual responsibility”.
While Eurocarers is pleased to see the explicit reference to reconciliation of work and family life as an issue which is important in the general employment context, we are disappointed to note that this is the only place in the entire document where this concept is being referred to. Enabling a better balance between work and family life is the key to unpaid care provision, and policy measures to facilitate this better balance should be taken in the short term.

Mention is also made of the evidence of negative effects associated with this increasing diversity of working arrangements, e.g. a risk of ‘getting trapped in a succession of short-term, low quality jobs with inadequate social protection’. Eurocarers would like to point out that carers run the risk of being left with insufficient pension and social security rights, as a result of having to leave paid employment because of caring responsibilities. Women are most affected in this respect, which raises serious issues in relation to equal opportunities, poverty and social inclusion.

In response to the Commission’s question (1) therefore, Eurocarers believes that:

- Individuals should be in a position to have genuine choices in relation to take up caring, paid employment or a combination of the two. This means that there should be to support working carers if they choose to combine work and care. In cases where the caring responsibilities become too heavy, financial compensation should be available to compensate for lost income and social security rights.

- Measures to facilitate returning to the labour market should be put in place.

- Occupational health services should take account of the (impact of the) caring situation of the employee when assessing health and health needs.

- Enhanced and practical options for reconciliation of work and family life/care responsibilities and access to these options should be developed, in order for carers to maintain an adequate work-life balance for carers, such as:
  - flexible hours,
  - part-time work,
  - care-leaves,
  - ad-hoc day-care facilities,
  - promotion and development of information and communication, technologies for telework and telecare.

- Flexicurity, i.e. flexibility combined with (social) security is indispensable for carers, if they are to continue to provide care. Carers issues should be considered an integral and crucial part of the EU and national flexicurity debates and policy development.

- There should be legal provisions to safeguard pensions and social protection for carers leaving paid employment in order to care, to provide benefits to carers in relation to the time dedicated to care for dependent relatives (e.g. paid leave).

- An infrastructure of care should be put in place to support carers in paid employment and those wanting to return to work, such as
  - available, high quality and reliable formal care services,
- address and prevent shortages of formal caregivers,
- develop and extend services that support carers, such as flexible home care services and respite care schemes,
- promote the development and use of telecare support systems.

➢ An EU-level debate should be held, with the aim to explore issues in relation to recognising caring as work, requiring an appropriate level of remuneration.

4. Modernising labour law – issues for debate

a. Employment transitions

This section refers to the original objectives of labour and social security laws, i.e. to provide protection for dependent employees. It is recognised that ‘these may not be sufficient to assist workers in making transitions from one status to another, whether these are involuntary discontinuities (e.g. dismissal and unemployment) or voluntary discontinuities (e.g. in the case of education and training leave, caring responsibilities, career breaks and parental leave).’

Eurocarers is happy to see this reference to carers and their responsibilities and would like to reiterate the need for labour market policies and labour law to reflect this social reality.
Furthermore, the paper mentions the need to address the ‘problems of female workers…who still face obstacles in seeking access to full rights and social benefits’. Having to give up paid employment in order to provide care or work on a part-time basis in order to cope with combining work and care, should definitely be considered as one of such obstacles. Concrete measures need to be taken to address this issue.

In answer to the Commission’s question (5), Eurocarers would indeed advocate considering a combination of more flexible employment protection legislation, and develop both active and passive labour market policies. Examples of legislation that take account of the situation and interests of carers exist in a number of member states, such as the Irish Carers Leave Act (2001), which provides for the temporary absence from employment of employees for the purpose of the provision of full-time care and attention to a person requiring it, to protect the employment rights of those employees during such absence. Another example is the UK Work and Families Act, which comes into effect in April 2007, which entitles carers of adults the right to request flexible working arrangements from their employers. Legislation taking account of carers exists in a number of other countries as well.

Conclusions

Eurocarers would like to underline that the EU should focus on the implementation of all objectives of the Lisbon Strategy ensuring that it delivers not exclusively in relation to economic objectives but also fulfils its social dimensions.

If labour market participation needs to be increased as part of the overall economic objectives of the EU, measures ought to be put in place allowing and facilitating carers to combine work with care responsibilities. Developing practical possibilities for reconciling work and family responsibilities should feature high on the EU’s and national policy agendas.
Eurocarers once again would like to thank the Commission for this initiative and would be happy to be involved with future initiatives and debates in this important area. In this respect, we look forward to the upcoming Communication on flexicurity.

1 For more information: www.entemp.ie/employment/rights

8 other UK examples: Employment Relations Act 1999- all employees gained the right to ‘reasonable time off’ to deal with unexpected situations related to their caring or parental roles, which can be either paid or unpaid at the discretion of their employer.

Employment Act 2002- carers of disabled children under 18 years old, along with parents of all children under 6 years old, also gained the right to request flexible working in their employment.

The Carers (Equal Opportunities Act) 2004- statutory duty on Social Services Departments (SSDs) to inform carers of their rights. This Act also required SSDs, in conducting carer’s assessments, to consider carers’ wishes in relation to education, training and employment.

ii For an overview of employment (and other) policies on carers in different countries: http://www.msvu.ca/mdcaging/policyprofiles.asp