EASPD Response to the Green Paper ‘Modernising labour law to meet the challenges of the 21st century’

EASPD

The European Association of Service Providers for Persons with Disabilities (EASPD) represents close to 8,000 service provider organisations across Europe and across disability and is the voice of the providers’ sector in Europe. The main objective of EASPD is to promote the equalisation of opportunities for people with disabilities through effective and high quality service systems. We believe in interdependence and partnership of user’s organisations, providers and authorities at all levels to tackle the challenges ahead.

This contribution to the Green Paper on the modernisation of labour law should be seen in a twofold way. EASPD represents the views of a European network representing social service providers and thus employers in a fast growing sector and at the same time voices the concerns of disadvantaged people who encounter difficulties in entering the labour market.

INTRODUCTION

EASPD clearly welcomes the consultation on ‘Modernising labour law to meet the challenges of the 21st century’, but regrets the technicity of the questions which might limit the involvement of national and local partners.

The past few years, we have seen that, although European employment rates rise in general, the number of persons with a disability having a job is static or even diminishing. Today, over 50 million people in Europe – one in six – aged between 16 and 64 have a long-standing health problem or a disability. Both from a social and from an economic point of view, there are huge opportunities to be explored in this area.

Economic activity should be promoted as a contribution to the well-being of individuals and society as a whole and not only as a goal in itself. The reform of labour law is a unique opportunity to improve employment opportunities for people with disabilities, in line with the goals set out in the (revised) Lisbon strategy.

Coherence in EU employment instruments

A higher degree of coherence in the set of EU employment policies is a must. It is important that the different initiatives (often taken at different levels) correspond and not contradict each other. A better communication within and amongst DG’s is needed to ensure that for example the Communication on the active inclusion of people furthest away from the labour market, the Green Paper on labour law, the state aid Regulation, the Green Paper on demographic change, but also the employment equality Directive, the Green Paper on equality and non-discrimination, the European Action Plan on disability,... do correspond and have the same ultimate aim. Moreover, a decision is urgently needed with regard to the currently blocked directive on the division of working time. The failing of the European Council to come to an agreement does not reinforce the credibility of the EU employment policies.
The stakeholder approach

Real stakeholder cooperation is needed to come to effective and efficient policy making. Social services are a core element of all European social systems. They contribute to social cohesion and social inclusion and to the implementation of fundamental rights of users (both key objectives of all social protection systems). Social service providers are also part of a fast growing sector in Europe, both with regard to employment opportunities and to impact on the national GDP’s. Therefore their contributions should be valued and social service providers should be involved as real stakeholders. An actual stakeholder cooperation involves both users, providers and authorities at all levels to tackle the challenges ahead.

THE REFORM OF LABOUR LAW

- Employment is a multifaceted concept

Labour law is closely connected to social law, more specific to the universal right to social protection and minimum income. Extra measures are needed to increase employment opportunities for all in a context of changing work-life patterns, including through non-financial measures such as training opportunities and lifelong learning. Because employment is a multifaceted concept, EASPD would pledge for a holistic approach. Of course such a holistic approach only increases the importance of a high degree of coherence in the set of EU instruments.

Quite some national constitutions have included the right to work as one of the basic human rights (e.g. CZ - art.26 “Everybody has a right to gain maintenances for living by work”). However in some other member states, for example in Austria, Belgium, France and Germany, the system might facilitate exclusion. In those countries legislation provides the possibility to consider certain (groups of) people as “not able to work”. This implies that legislation in those countries is not in line with the employment directive. It is highly important that European labour law addresses these issues.

- Flexicurity

‘Flexicurity’ has become the buzzword for any discussion related to employment. A correct understanding of flexicurity with a strong security dimension including social protection, lifelong learning, activation policies and full worker’s rights, should help to make the case for a more integrated approach to employment and social policies. EASPD therefore also welcomes the EC view that the modernization of labour law constitutes the adaptability of enterprises: flexibility for employees as well as for employers.

A well-balanced approach is a must: if implemented in a good way, flexicurity might facilitate employment of people with disabilities and better identify their needs. A more flexible approach from authorities is needed to make sure that people with disabilities can enter and leave the labour market without losing their benefits (see lower: benefit trap).

- Mainstreaming

It is key to address the overall issue of non-discrimination in a horizontal way, across all policy areas (the mainstreaming process), as well as vertically, across the different levels of legislative competence and according to the principle of subsidiarity. In this respect it is needed to say that availability, affordability and adaptability of services and support systems for people in need and full accessibility of society are crucial in order to combat discrimination.

One could say that disability issues need to be mainstreamed in all relevant policies and initiatives so as in employment. Nevertheless, a two-pronged approach is needed: disability mainstreaming may not exclude disability specific measures.
• **Decent income for all**

Social protection must be improved to be effective in securing a decent income and adequate pension, so all are able to live in dignity. The right to social protection and to a minimum income are fundamental rights. State aid subsidies for employment of people with disabilities should aim at real salaries/wages and not only at allowances, as it is the case in most European countries.

• **Division of working time: sleepovers and on-call time**

EASPD agrees that labour law must ensure a proper work-life balance. However, if sleepovers and on-call time are seen as real working time, this will have serious implications for social service providers. The additional financial burdens arising will, for not-for-profit service providers, have to be met either by the funding body (usually central or local government) or the individual user of the service, which is the disabled or other vulnerable person requiring care and support services. If the additional financial burdens are not met, the (quality of the) service itself will have to be significantly reduced. This means that or the extra financial burden needs to be met by the funding authority or that sleepovers and on-call time need to be excluded from the definition of working time.

• **Life-long learning**

Knowledge is the basis for all development, especially for employment. Every person has the right to education, and this right must consequently include all disabled people. As it was mentioned in the introduction, extra measures are needed to increase the employment for all including through non-financial measures such as training opportunities and lifelong learning.

The same goes for staff working in the disability sector. As mentioned later on in this document, very often staff in the disability sector has very few career opportunities. Life-long learning can be an answer to improve working conditions for staff.

• **Temporary labour work**

Temporary work plays an important role as a gateway to real employment. It presents considerable opportunities for all to get a first working experience. It is needed again to refer to the need for coherence in the EU set of instruments. Labour law must take into account the approach taken by the directive on temporary agency workers. People with atypical contracts should not be treated less favourably in terms of working conditions than a permanent member of staff doing a comparable job in a comparable firm.

• **Mobility of work staff**

Because of the enhanced mobility of staff, standardisation of staff qualifications is needed to ensure the quality of service provision. A transnational system for the recognition and implementation of the entry level qualifications for care staff would be very useful. An important role is here to play for the educational systems throughout Europe. EASPD is currently developing a so-called European Care Licence (more info, see [www.eclicence.eu](http://www.eclicence.eu) or contact [jelle.reynaert@easpd.be](mailto:jelle.reynaert@easpd.be)), funded by DG EAC.

In Eastern Europe, danger for a brain drain of staff occurs because of the free movement of workers in the EU. Service providers from the East put toward their concerns that more often their qualified workforces move to the old Europe where conditions and wages are a lot better.
CHALLENGES FOR THE FUTURE

Situation of people with disabilities

Disabled people are amongst those people that are the furthest away from the labour market (or better, the labour market is very far away from people with disabilities). Very often these people have multiple disabilities or complex needs and therefore do not fit easily into generic programmes or measures.

According to EC data more than 50 million people aged between 16 and 64 consider themselves to have a long-standing health problem or disability, representing around 16% of the overall EU working population. Figures also indicate a gap between the employment rate of disabled and non-disabled people: on average only 50% of Europeans with a disability have a job, as compared with over 68% of non-disabled people.

People with disabilities very often have specific needs, which means that specific instruments are needed. A good balance between flexibility and security might bring up new opportunities.

General need for definitions

With the enhanced mobility of staff and of work and because of the upcoming new Regulation on State Aid, European-wide definitions might be needed on the following concepts: “employment”, “supported employment”, “sheltered employment”.

The benefit trap

Discussion on minimum income opens up the debate about the benefit trap for people with disabilities. The issue of benefits being linked to the household situation of the family is true and from the perspective of people with severe disabilities, they very often have no choice but to live with their families who in many cases, act as unpaid staff or unpaid personal assistants for the individuals concerned. Given the fact that people who have not had the opportunity to enter the labour market are often reliant on only basic incomes provided by the state and have high levels of need, it is not surprising that many of these individuals continue to live with their families.

In terms of action at member state level, the bottom line should be to make-work pay. This requires a significant overhaul in many cases of the current benefit systems, because there is a danger that benefits will be watered down or just taken away when actually finding a job. Assurance must be given to people with disabilities that the approach will be to provide additional benefits, supports and incentives to enter the labour market and most importantly, a safety net in case a situation does not work out. Thanks to this safety net, people can return to their previous status with an absolute guarantee that they will be in no way penalized or disadvantaged.

EASPD would suggest the EU and national authorities to focus subsidies and instruments that facilitate employment of disadvantaged people on people in transitional phases. If we take the example of the transition from education to employment, specific help could prevent people ending up in long term unemployment.

Staff: quality of work

The social service provision sector in the EU altogether employs more than 4 million professionals and another 4 million people indirectly. Approximately 10 million people with special needs are supported in their jobs.

Nevertheless, still up to 95 % of staff are women, unfortunately with minor carrier opportunities even though they often have to be very flexible in their working time. Labour law
should secure equality between women and men and address the issue of care for dependent relatives (see benefit trap). In general, labour law should aim at improving the quality of employment for all.

**Sheltered Employment**

In the current state aid Regulation: “sheltered employment” means employment in an establishment where at least 50% of the employees are disabled workers. The EU should promote the inclusion of persons with disabilities in the open labour market. Nevertheless, at the moment there are up to 2 million disabled people employed in sheltered workplaces throughout Europe. It is clear that it will take time to make the shift towards employment in the open labour market. For some people with disabilities, it is even uncertain if this is feasible anyway. EASPD strongly believes supported employment is preferable to employ disadvantaged people, but (subsidized) infrastructure and support systems for this must be further developed and created first.

The EU should make clear that employing persons with disabilities does not always imply extra costs for the employer. When extra costs occur, it is important that all of them are covered.

**CONCLUSION: 5 ACTION POINTS**

- EASPD applauds the European Commission for opening the debate on the modernisation of labour law. Labour law should offer effective protection of individuals and collective rights. Reforming legislation in this field might bring unique chances to improve employment opportunities for people with disabilities.

- Real stakeholder cooperation is needed to come to effective and efficient policy making. Therefore EASPD regrets the high degree of technicity of the questions posed in the consultation. Given the fact that the social service provision sector is amongst the fastest growing sectors in Europe with regard to employment, their voice is crucial in this debate.

- A higher degree of coherence in the EU set of instruments is a must. All initiatives in the field of employment have to correspond and not contradict with other legal instruments, also in other fields such as non-discrimination.

- Labour law must facilitate the access and reinsertion of unemployed people into the labour market. Therefore, EASPD urges the Commission to acknowledge the existing problem of the benefit trap and to include it in the National Action Plans of the Member States. All people should be entitled to social protection and a minimum income.

- Labour law must secure better career opportunities for first line staff (mainly women) in the sector. EASPD also asks the EU for launching the debate on standardisation of staff qualifications throughout Europe.

EASPD truly believes the current reflection on the reform of labour law is a unique chance to come to equality in employment (both access to and quality of jobs) for all. This objective complies with the revised Lisbon strategy for growth and jobs that aims in particular to improve the comparatively low work participation rates of Europe’s disabled people.