AGE response to the Green Paper on Modernising Labour Law to meet the Challenges of the 21st Century

Key recommendations

AGE wishes to make a number of key recommendations on the elements which its members believe should form an integral part of a modernised labour law. It considers that labour law should respond to the following challenges:

• It should ensure progress in the fight against all forms of discrimination in access to the labour market, in particular for older people who need and/or wish to work;

• It must be more inclusive and guarantee equality for all people active in the labour market, including older people and in particular older women or those older people who are disabled, and regardless of the contractual terms under which they are employed;

• It should facilitate a life-work balance and accommodate all employees’ needs, including those of older workers, mostly older women, who hold caring responsibilities; the debate on reconciling work and family life should address the specific needs of older women and develop family-friendly policies which respond to these needs, In other words, they should mainstream the ageing dimension in all gender equality and family friendly policies.

• Civil society organisations should have the right to take legal action in cases where a person is not a member of a trade union and their employment rights are infringed; and there should be an equal participation of civil society in stakeholder debates;

• It must integrate a compulsory and adequate 1st pillar pension system for all active people in the labour market, unemployed persons, and in
particular “mobile” workers;

- Quality employment should be a fundamental objective and one which is based on fundamental rights, including social protection, employment security, equal pay for equal work of equal value, access to an inclusive labour market, career development and access to training, and the fight against discrimination to ensure equality for all.

- It must guarantee the full implementation of the European Framework Directive on Employment and dedicate the appropriate human resources in terms of labour inspectors to achieve this;

- It must compel employers to set up clear and effective mechanisms guaranteeing equal opportunities for all in the workforce. These mechanisms must concern recruitment procedures, promotion and training as well as proper internal protection from victimisation when people claim their rights;

- It must guarantee access to education, training and lifelong learning to vulnerable groups, including for instance older people who wish to remain in or return to the labour market;

- It must ensure gender equality. To that aim, it must guarantee effective mechanisms for the implementation of equal pay for male and female workers for work of equal value. It must also provide equal scope for job development between genders, including in the older workers’ group.

Introduction

According to the European Commission’s 2006 Annual Report on Growth and Jobs, “increasing the responsiveness of European labour markets is crucial to promoting economic activity and high productivity.” Employment policy has become an area of central focus on the European agenda and AGE welcomes the opportunity provided by this consultation to engage in a discussion on how labour law can evolve to better support the revised Lisbon Strategy’s objective of achieving sustainable growth with more and better jobs.

AGE commends the European Commission on the timeliness of this debate and hopes that the views of its’ member associations on modernising labour law to meet the challenges of the 21st century will be taken on board in the Commission’s reflection processes.

AGE welcomes the inclusiveness of this consultation and believes that the European Commission is right not to limit this to the Social Partners. AGE considers that the opportunity to contribute to an open dialogue between all
relevant stakeholders on how best to facilitate an appropriate balance between flexible labour market arrangements and the necessary safety and compensatory measures, guaranteeing adequate social protection and continuous employability for people of all ages, is a key step towards the aim of achieving a European society for all ages.

In particular, AGE welcomes this opportunity to assist the Commission in identifying key challenges in the area of the labour market which have not yet yielded an adequate response and which reflect a clear deficit between the existing legal and contractual framework and the realities of the world of work from the perspective of the older worker.

Context

The conditions and circumstances in which European labour markets function have changed rapidly during recent decades and labour law needs to respond to the social, economic and demographic changes which are taking place. The impact of evolutions such as globalisation, population ageing, ongoing restructuring and the move towards an increasingly knowledge-based economy need to be addressed, including in relation to the specific needs of the growing number of older workers, in particular older women, whose employment rate is the lowest of all categories, and those seeking to re-enter the labour market over the age of 50.

Concepts of ageing and older workers’ rights and requirements have important labour market implications and need to be integrated into these discussions. The increasing dependency ratio will have important ramifications for public services, health care provision, social security schemes and pensions systems.

Creating a better environment for older workers

There are growing concerns about the working environment and the quality of work provided to older workers as well as the obstacles they face to remaining in or re-entering employment. Older workers often lose out in the labour markets as a result of employment policies and employers’ approaches to them and they suffer disproportionately from periods of unemployment. This is particularly true for older women who have taken time away from paid employment to care for dependent relatives.

Equal opportunity and fair treatment is the basis for a solution to older workers' problems in the labour market and action is needed from employers as well as governments to deliver results. While adequate legislation against age discrimination in employment is indispensable, legislation is not in itself enough to help retain older workers in employment or to delay the average effective retirement age. The promotion of a positive approach among employers to older workers is a necessary component to raising the employment rate of those over
50 years of age. Active labour market policies targeting this specific age group are needed as part of a life-cycle approach together with effective follow-up to ensure a change of culture and approach to older workers.

This could take the form of adapting working conditions to the needs of older workers, the promotion of flexible working hours and incremental or part-time retirement. Workplace and working time adjustments could be effective vehicles for promoting the employment of older workers which at the same time are relatively lower cost solutions. Incentives should also be implemented to retain older workers in employment. These should not be limited to financial advantages but should address the whole range of valid reasons which lead people to retire early. Working conditions, the attitude in the work environment, a better jobs-skills match and the specific difficulties that older workers, in particular older women, face in reconciling work and family life should be addressed. There is a need to provide an inclusive, attractive, safe and adaptable work environment which takes on board the needs and expectations of the ageing workforce and provides opportunities for their training and the updating of their existing skills.

However, individual choice is a key issue to be taken into account. While active ageing should be considered as a positive strategy, encouraging and enabling older workers to extend their working lives, if they wish and are able to do so, other workers - in particular those in high stress or employed under difficult working conditions or with caring responsibilities for dependant relations - need to retire early. There should be no attempt to compulsorily oblige all older people to continue to work regardless of their physical capacities, state of health, economic situation and family circumstances.

The added value of older workers

With the rapid ageing of the European population and longer life expectancies, extending working lives has become a key priority at EU level. This, we are told, is necessary to ensure the long term sustainability of our social protection systems. Older people make a useful contribution to society and would be capable of a far greater involvement in all areas of societal and community life. However, certain barriers prevent their full participation, particularly in the labour market. For instance, many are excluded because of out-dated skills, mobility problems, discrimination and caring demands.

The prevailing approaches to the employment of older workers in the EU will have to change and employers will need to retain and develop skills in their existing ageing workforce. In the context of debates about raising retirement ages, AGE considers it imperative to recall that with the employment rate of workers aged 55-64 still averaging only around 40% (31.7% for older women), real gains are to be made in enabling both men and women to work productively as long as they wish. High unemployment and under-employment affect the older
workers’ group more than others and specific attention needs to be paid to meeting their needs and developing the right incentives and supporting measures.

AGE believes that Member States must commit themselves to giving a higher priority in their National Reform Programmes to achieving the commonly agreed Lisbon objectives, including mechanisms to ensure greater security of employment for all and for women in particular. The tendency of some Member States to force older workers to take low and poor quality jobs is not the right approach and we are concerned that the EU legislation on non discrimination in employment, which has now been transposed in all Member States, does not seem to protect older workers from being exposed to age discrimination. This is the case, for example, with the new German Equality Law which does not cover dismissals. This means that employers can continue to choose to dismiss an older worker rather than a younger one on the ground of their age.

Older workers will be more inclined to remain in employment if they are offered jobs and working conditions which enable them to make the best use of their skills and experience and where their performance and contribution continue to be valued. Self-employment is another important option for older people and can provide them with the flexibility to reconcile paid work with other responsibilities or commitments. Moving to self-employment should not however result in a lowering down of the social protection level and the gender dimension of moving to self-employment should be better explored.

Employers should be made more aware of the untapped labour reserve of older workers and of the value of recruiting and (re-)training them. Employers might also be interested in skills transmission from older workers to the young as a way of addressing possible skill shortages. An eventual aim of such measures could be to convince employers that "ageist" policies are not only morally and socially unjust but also work against the employers' own economic interests and image. When the population is ageing rapidly, discrimination becomes counterproductive in terms of business interests. The business case for widening labour market participation will require leadership from governments who should actively engage other stakeholders i.e. NGOs in debates on employment.

Flexicurity

AGE takes a keen interest in the debate on flexicurity and these discussions have been closely followed by its’ members from the very beginning as the concept of flexicurity relies on a proactive labour market policy and is particularly pertinent to older workers. Flexicurity also has a significant impact on later life and for these reasons it is of utmost important for AGE members. AGE supports increased flexibility in the labour market only if it does not lead to an erosion of workers’ rights in fundamentally important areas which concern their employment, income security including in old age, and the stability of their
working and living conditions. It is often the most vulnerable groups such as older workers, women and migrants who are hardest hit by so-called flexible working practices. It is therefore important to ensure a greater clarity over what the concept means for older workers and to assess what advantages this can hold for them.

Seen as an integral part of the macroeconomic policy-mix, flexicurity should, in our view, be an additional tool strengthening the European social and economic model, which promotes strong social protection, gender equalities, high living standards, social cohesion, and measures to combat exclusion, both from the labour market and within society. Moreover, since the concept of flexicurity assumes flexibility and security to be complementary, even mutually supportive, elements, AGE calls for an ensuing balance to be upheld between flexible labour market arrangements for employers (lowering the level of job protection for workers) and safety and compensatory measures (guaranteeing adequate social protection and continuous employability) for all regardless of their age. Managing demographic change and increasing the employment rates of older workers, including older women, must be facilitated by a system that stimulates employment while providing sufficient and reliable safety nets adapted to today’s lifestyles and changing economy. In our view, a major point of concern is the move from job security to employment security. This will require specific attention to be paid to older workers to ensure that the outcome of such reforms is not going to mean a higher pre-retirement rate or increased long term unemployment for this age group, and for older women in particular.

Flexicurity strategies imply political choices between various aspects of flexibility and security. AGE believes that a coherent and better informed strategy is needed to make successful choices. Experience over the past two decades has shown that no single combination of policies and institutions can achieve and sustain good labour market performance. AGE therefore supports the view that current demographic trends require an integrated approach, mobilising and co-ordinating a range of relevant policies and a variety of stakeholders at different levels. Civil society should be consulted on an equal basis as the Social Partners, as it represents a broad cross-section of stakeholders who would not otherwise have a voice, the so-called “outsiders”, i.e. those who are presently excluded from the labour market.

At the same time, AGE considers that population ageing poses challenges that cannot be addressed by “one-size fits all” solutions. Indeed, the ageing population is a phenomenon whose impact varies greatly both from one Member State to another, and also within countries, depending on the initial structure of the population, the pace of change and the economic and social conditions prevailing at national and sub-national level. The optimal balance between flexibility and security thus differs between countries and regions due to such differences in institutional settings, societal and economic context and respective business climates. Each country and region has to choose the right combination
of policies itself in order to achieve EU common objectives of full employment and greater social cohesion.

The ‘flexi’-dimension is easier to implement than the ‘-(se)curity’ aspect and AGE is concerned that the negative aspects of flexicurity i.e. disincentives to work, and the contrast between varying levels of protection, raise questions over what - and to what extent - older employees really stand to benefit in practice. Governments must ensure that increased flexibility in the labour market does not lead to infringements to the full implementation of employment legislation and the implementation of the Framework Directive on Employment, Occupation and Training (2000/78/EC). For instance, more flexible and short-term contracts should not result in aggravated age discrimination in employment by providing a rationale to terminate the employment of older workers (cf. ECJ Mangold case).

Concluding remarks

AGE supports increased flexibility in the labour market only if it improves the employment prospects of older workers and does not lead to an erosion of workers’ rights in fundamentally important areas which concern their income security, including in old age, and the stability of their working and living conditions. It is often the most vulnerable groups such as older workers, women and migrants who are hardest hit by so-called flexible working practices. There is therefore a need to ensure a balance between flexibility and security. A balanced flexicurity approach should address the needs and difficulties which result from the development of atypical forms of work as well as set limits to the scope of flexibility. A labour market that favours flexibility over security would have inherent social conflicts and would be both damaging to the effectiveness of the labour market and the EU economy and incongruent with the social values of Europe.

The labour market must be created in a way that gives all people a fair chance to earn a decent income and play an active role in society. New labour laws should consider the need for investment in human resources and lifelong learning as preconditions for a sustainable labour market. The current system of workplace-related security measures should be replaced by transverse labour market measures covering employees’ lifelong involvement with the labour market. Europe must build up a labour market and social security systems that can guarantee a high level of social security under different employment conditions, contractual terms and different employment and life cycles. Such a system should allow people to move flexibly from job to job, from sector to sector, from country to country and from part-time to full-time work or vice-versa, while preserving their social rights including their right to an adequate income in old age.

Furthermore, AGE believes it is the duty of public authorities as well as of the social partners to promote a more positive image of older workers and to
challenge ageist assumptions. For instance, there is evidence to show that workers’ productivity does not decline with age as diminishing physical ability is easily compensated for by qualities and skills acquired through experience (OECD 2006). Good quality work must be available for older workers, including older women, before early retirement schemes can be gradually reduced and it should be ensured that those who wish to work beyond state pension age can do so and are not deterred by inflexible policies which restrict such a choice.

30 March 2007

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