Eurodiaconia Response to the European Commission Consultation on the Green Paper
Modernising labour law to meet the challenges of the 21st century

Eurodiaconia welcomes the Commission’s initiative to launch a consultation on modernizing labour law. We particularly welcome the openness of the consultation to include all stakeholders and not confine the scope to the social partners. We welcome this because we believe that labour law regulations are closely linked to social policies and issues of inclusion and social protection in which sphere social NGOs play an important role as facilitators of empowerment, as bridge builders and as service providers.

Eurodiaconia represents church and diaconal organizations and service providers in 20 European countries. Our members provide social and health services and many of our members are running projects and initiatives that aim at re-integrating people into the labour market and working with those on the margins of society as a whole.

Eurodiaconia is member of Social Platform and would also like to refer to the response the Platform has made to the Green Paper consultation.

1. What would you consider to be the priorities for a meaningful labour law reform agenda?

We recognize that European labour markets have changed dramatically over the last generation and are faced with a number of external and internal challenges, which call for a consideration on reforming labour laws. We particularly welcome the emphasis in the Green Paper on finding a way forward which offers a proper balance between flexibility and security for employers and employees and addresses the increasing problems of a two-tier labour market and the risks for people in our societies faced with precarious working situations.

We particularly see three priorities for a meaningful labour law reform agenda:

Priority 1: Take an integrated approach to modernisation
The attempt to modernize labour law in Europe is part of the Lisbon strategy. We believe that any consideration to reforming labour law in Europe must be seen in cooperation with the attempt to integrate social inclusion into the equation. We strongly support all three pillars of the Lisbon strategy being seen as an integrated whole when debating jobs, growth and reforms. We do this because we see social inclusion strategies not as added
costs but as an integrated part of an economically sustainable society and as promoters of growth and jobs.

An integrated approach also means that the aim of modernization is not only more jobs but more quality jobs and jobs that pay.

The Green Paper puts much emphasis on flexicurity as an important tool in the modernization process. We welcome this emphasis because the flexicurity model takes an integrated approach to employment regulations, social protection policies and the pooling of risks and empowerment of the individual through lifelong learning.

It is, however, clear from the debate in the EU institutions and among stakeholders that there needs to be a much clearer definition of what we mean when we say flexicurity.

Under no circumstances can the labour reform agenda use the concept of flexicurity if it does not recognize the subtle equilibrium within the model of employer and employees’ rights and responsibilities.

**Priority 2: Critically assess the interrelatedness of employment and social protection**

The green paper states: “from its origins, labour law has been concerned to establish employment status as the main factor around which entitlements would be developed”.

However, the typical employment situation of a male breadwinner who stays in the same job over a considerable number of years has changed as has the nature of many jobs. As the Green Paper also points out, we must assess how we can ensure that transition between jobs over a life-cycle does not entail a lack of social protection.

We therefore recommend that labour reforms include an assessment of the interrelatedness between employment and social protection – and not only between different employment contracts and social protection.

**Priority 3: Make labour markets accessible and use the resources of all stakeholders**

The labour market is characterized more today than a generation ago by transitions between jobs, demand for skilled and particularly highly skilled workers and the need for the adaptability of workers to new situations. The Green Paper at hand focuses on the role of legislation and collective agreements in contributing to modernizing labour law.

However, many other stakeholders – among them social NGOs – can play an active role in empowerment and enabling individuals to actually take up a job. NGOs work as bridge builders in this process and hence work together with the social partners in fulfilling the Lisbon strategy. We call for a recognition of the role of social NGOs in this process.

The Green Paper focuses mainly on people already in employment and who are in transition between jobs. We would like to point to the importance of also addressing the problem of structural obstacles to access the labour market. Labour market reforms must critically assess the structural barriers of entry and how these barriers can be removed.
2. Can the adaptation of labour law and collective agreements contribute to improved flexibility and employment security and a reduction in labour market segmentation? If yes, then how?

Collective agreements depend on a balance of power for the partners involved. It is important that in any adaptation risks do not become individualized but are kept collective.

In relation to labour market segmentation our concern is that not enough is done for those furthest from the labour market. It is clear that it is individuals with low skills who are increasingly becoming permanently excluded from even entering the labour market. In adapting labour laws it is not enough to focus on empowering the individual. The question how we can make labour markets be flexible and open up to those who are furthest from the labour market is a key to overcoming labour market segmentation. Positive treatment combined with social protection measures could be a way of achieving this goal.

3. Do existing regulations, whether in the form of law and/or collective agreements, hinder or stimulate enterprises and employees seeking to avail of opportunities to increase productivity and adjust to the introduction of new technologies and changes linked to international competition? How can improvements be made in the quality of regulations affecting SMEs, while preserving their objectives?

N/A

4. How might recruitment under permanent and temporary contracts be facilitated, whether by law or collective agreement, so as to allow for more flexibility within the framework of these contracts while ensuring adequate standards of employment security and social protection at the same time?

The Nordic flexicurity model offers a balance between flexibility (for both employer and employee) and security. However, the model is based on a historical and cultural setting which is quite particular to the Nordic countries. The diversity of employment regulations and situations in Europe does not offer one single solution to labour reform though lessons can be learned from the Nordic model.

It should be assessed if some of the principles of the flexicurity model could be transferred such as:

1) The strong dialogue between social partners
2) High social protection that does not depend on contractual forms of employment. This makes recruitment under different contractual forms more flexible and allows security in transition for the individual
3) the integrated approach of labour market policies and social policies and the active interplay between social partners, the state and civil society organizations

The flexicurity model works if there is a win-win situation. Employers gain flexibility, employees gain security and also flexible employment conditions. The equilibrium of this win-win situation is a key aspect of the model.
Flexibility can be a gain for the employee as well as the employer. However, we must critically assess not only what new contractual forms but also new forms of employment means for the well-being of the individual – for example 0-hour contracts, working from home etc.

Lastly it is essential to ensure that there is no discrimination towards those on a non-standard contract as regards other services in society such as financial services (access to banking, or taking out a mortgage as example).

5. Would it be useful to consider a combination of more flexible employment protection legislation and well-designed assistance to the unemployed, both in the form of income compensation (i.e. passive labour market policies) and active labour market policies?

A policy-mix to balance flexibility and security is a positive way of building bridge between transitions between different jobs and between those inside and outside the labour market. We also see “personalized pathways” as a good possibility to empower the individual in the transition processes.

But in addition to the labour market policies directed at the individual one should also look at the possibilities of making the labour markets themselves more inclusive for people who are furthest from the labour market. Alternative job opportunities (an example could be the flexi-job model from Denmark) and positive treatment for disadvantaged could be steps in this direction.

We therefore recommend that labour market policies be re-viewed together with inclusion policies.

An important question arises when we talk about flexible employment – and that is the increased risk for the individual. We believe risks should be borne collectively in society. At the same time we believe in the empowerment of the individual and investment in his/her resources. We therefore welcome measures that will promote a policy mix which both – in Commissioner Spidla’s words – creates bridges for people in transition (active policies) and provide adequate support for those who, for one reason or another, are out of work. Social protection is a human right that should not be conditioned by your employment situation.

6. What role might law and/or collective agreements negotiated between the social partners play in promoting access to training and transitions between different contractual forms for upward mobility over the course of a fully active working life?

Taking into consideration that most people change jobs over their working life, the investment in the work force through life long learning cannot be confined to those on standard contracts.

Life Long Learning is an investment in society for all people regardless of their contractual situation and also for people between jobs and people seeking to enter the job market.

Both public authorities and employers therefore have a responsibility to create access to Life Long Learning for all. This should be ensured through law and/or collective agreements depending on the national context.

Attention should also be given to the possibilities of the third sector agents/NGOs to work with people’s skills and resources to empower individuals to enter the labour market.
7. Is greater clarity needed in Member States' legal definitions of employment and self-employment to facilitate bona fide transitions from employment to self-employment and vice versa?

N/A

8. Is there a need for a “floor of rights” dealing with the working conditions of all workers regardless of the form of their work contract? What, in your view, would be the impact of such minimum requirements on job creation as well as on the protection of workers?

To ensure that those in flexible forms of employment do not get trapped in consecutive short-term jobs with precarious working conditions social protection and the access to Life Long Learning should be a right independent of your type of contract. A higher independence between your input to the labour market and your benefits should be sought to empower the individual. We believe this offers better protection for the individual and empowerment that will in turn have a positive influence on the adaptability of workers to the changing demands of the labour market.

We strongly support the conclusions of the Green Paper: “Well-designed unemployment benefit systems, coordinated with active labour market policies seem to perform better as an insurance against labour market risks.”

We would also like to draw attention to the gender issue. Better conditions for maternity leave and the re-entry into the labour market after birth should be addressed.

The EU has already sought to address some issues of workers’ rights but we call for clear follow-up and enforcement of regulations to achieve these rights in praxis.

9. Do you think the responsibilities of the various parties within multiple employment relationships should be clarified to determine who is accountable for compliance with employment rights? Would subsidiary liability be an effective and feasible way to establish that responsibility in the case of sub-contractors? If not, do you see other ways to ensure adequate protection of workers in “three-way relationships”?

N/A

10. Is there a need to clarify the employment status of temporary agency workers?

N/A

11. How could minimum requirements concerning the organization of working time be modified in order to provide greater flexibility for both employers and employees, while ensuring a high standard of protection of workers' health and safety? What aspects of the organization of working time should be tackled as a matter of priority by the Community?

N/A
12. How can the employment rights of workers operating in a transnational context, including in particular frontier workers, be assured throughout the Community? Do you see a need for more convergent definitions of ‘worker’ in EU Directives in the interests of ensuring that these workers can exercise their employment rights, regardless of the Member State where they work? Or do you believe that Member States should retain their discretion in this matter?

N/A

13. Do you think it is necessary to reinforce administrative co-operation between the relevant authorities to boost their effectiveness in enforcing Community labour law? Do you see a role for social partners in such cooperation?

N/A

14. Do you consider that further initiatives are needed at an EU level to support action by the Member States to combat undeclared work?

We believe the EU could and should play a bigger role in combating undeclared work. At the same time we recommend looking at access to labour market for third country nationals with respect for their social rights as well. The Social Charter of the Council of Europe is an important instrument and ought to be part of action taken in this field.

We would particularly welcome the EU addressing the issue of cross-border workers who are declared household helps but in actual fact are providing health-services for which they are sometimes not qualified and registered, in other cases they are qualified but not paid accordingly. The situation both for caretaker and caregiver is precarious and should be addressed.

Brussels, March 30, 2007

Heidi Paakjær Martinussen
Secretary General

Eurodiaconia is a federation of 32 members - churches, non-statutory welfare organisations and NGOs in Europe - operating at national and international level. Our members are rooted in Christian faith within the traditions of the Reformation as well as in the Anglican and Orthodox traditions. We network diaconal and social work of institutions and church communities and co-operate with civil society partners.

Our Mission: We link our members to serve for solidarity and justice. Our strategic aims are to ensure quality of life for all in a social Europe, to link institutions of diaconia, social initiatives and churches in Europe, to be and to enhance a network of competence.