Response from SKTF, the Swedish Union of Local Government officers\(^1\), to the European Commission’s Green Paper “Modernising Labour Law to Meet the Challenges of the 21\(^{st}\) Century”, COM (2006) 708

1. On 22 November 2006, the European Commission presented a Green Paper ‘to launch a debate in the EU on how labour law can evolve to support the Lisbon strategy’s objective of achieving sustainable growth with more and better jobs.’

2. SKTF welcomes the debate on how labour law at national and European level can support the Lisbon Strategy for growth with more and better jobs. However, successful economies are influenced by many other factors than labour law such as economic history and development, investment, access to natural resources, age profile of the population, and the challenges of competition from other countries in a globalised world, etc.

3. Though the Green Paper raises a number of significant issues that are of importance in the functioning of the labour market, the questions asked are leading and limited. In that way the questions do not open for that creative, thought-provoking and inventive debate that is needed. There is now a risk that the debate will be focusing on flexibility and security as opposites and not as dynamic conditions for further development of the European social model. That is, opening for the very narrow idea of flexicurity which creates a picture of a trade-off between flexibility and security. Flexicurity is a wide concept and must be considered in the right context. We think that the debate must concentrate on how to develop ways of enhancing, at the same time and in a deliberate way, labour market flexibility and security for employees.

4. Deregulation of labour law is not a motive power in the economic development. The goal is not to ease the condition for temporary contracts or the use of atypical or non-contractual forms of relationship between employer and employee.

5. SKTF does not see labour law which is devised in the right way as an obstacle for labour market mobility, increased employment and productivity. New and better jobs are not created by deregulating and weakening the individual rights of the employees. We see collective agreements and labour law as examples of methods of regulation that provide security for employees and flexibility for employers. Collective agreements and labour law in Sweden – as well as in other Nordic countries - are actual good examples of methods of regulation that provide both flexibility and security and also promote a common responsibility for the economic development and labour market relations.

\(^1\) SKTF organises employees in the public sector, the church and in the private sector providing services of general interest.
6. As the Commission writes in the Green Paper the focus is mainly on the personal scope of labour law rather than an issue of collective labour law. We see this as a general weakness. It is positive that the Commission looks through the individual rights and protection on the labour market. But in these relations it is of importance to recognise the vital role of collective agreements and the social partner’s ability and power to co-operate at different levels. Therefore we wish to point out the role of the social partners’ influence exercised through collective agreements which are asserting individual rights and enabling flexibility and transition.

7. SKTF supports the following statement by the Commission in the Green Paper: “Collective agreements no longer play a merely auxiliary role in complementing working conditions already defined by law. They serve as important tools adjusting legal principles to specific economic situations and to particular circumstances of specific sectors”\(^2\). We believe in the necessity for strong social partners who can conclude binding collective agreements covering large parts of the labour market and that can be adapted from sector to sector in line with the needs of the employers and the employees. We see the social dialogue as an important possibility and way to secure and develop that flexibility and security which is important for the fulfilment of the Lisbon Strategy.

8. SKTF does not share the assumption that weakening labour protection rules and legislation and the rights of one group (the insiders) on the labour market is a way of increasing job opportunities for another group (the outsiders). Increasing the number of more or less precarious individual contract possibilities with significantly reduced employment and social protection rights is not, from our point of view, the solution to the challenges we are facing on the European labour market. There is no link between the level of employment protection and the level of employment and the possibilities for creating new and better jobs.

Questions:

1. What would you consider to be the priorities for a meaningful labour law reform agenda?
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?
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?
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 at the same time ensuring adequate standards of employment security and social protection?

\(^2\) COM (2006) 708 final, page 5
9. To SKTF it is fundamental that labour law is mainly an issue for the Member States, as is the case today and discussion on reforms is first and foremost needed at this level. It is recognised that the Green Paper raises important issues which must be addressed by the Member States. However, we are convinced that the suggested areas for new reforms mentioned in the Green Paper lie within the competence of the Member States and are not dealt with at European level. If more change or legislation at European level is needed it is a matter for the social partners to discuss and conclude autonomous agreements on.

10. Reforms must focus on facilitating creating new jobs rather than eroding labour law. We also have to start a development in which we move the focus from job security to employment security. However, that is dependent on creating the right environment for change and transition. That does not happen by cutting individual rights or undermining labour protection but by a combination of unemployment benefits, active labour market policy, long life learning and the involvement of the social partners.

11. This does not mean that the Commission does not have a roll to play in the development and improvement of labour law. The internal market and competition rules interfere increasingly with national labour law and the social protection system. Cross-frontier problems and challenges following in the wake of free movement of labour must be met by solutions at the same level.

12. Community level regulation should concentrate on preventing unfair competition and social dumping between Member States. It should concentrate on migrant policy with active and effective protection and measures against labour exploitation and it should concentrate on ensuring social security and labour protection for posting workers.

13. Another important field for EU labour law is equal treatment and non-discrimination, for example due to nationality and gender. The Community should continue to promote initiatives aimed at achieving equal treatment and non-discrimination. It is noted that although significant progress has been made in these areas, the existing Community and national laws on gender equality have not yet achieved their aims. The gender pay gap and the lack of provisions for the reconciliation of work and family life are shouting out for new initiatives.

14. It is noted that the Community has already created a floor of rights for workers during different directives and agreements concluded by the social partners at European level. Existing EU legislation should be better implemented in order to ensure the social security and labour law protection in particular of employees with atypical, part-time and temporary employment contracts.

15. EU legislation should guarantee labour law legitimate exemptions from internal market rules which are necessary for labour law to fulfil its purpose and must respect the different methods for regulating the labour market present in the Member States. We support fundamental directives at EU level which set minimum standards for employee protection yet at the same time allowing the individual Member States to have higher levels. Europeans labour law legislation must contain the possibility to choose different ways of implementation. Member States must have the possibility of choosing between implementation by national law or by collective agreement concluded by the social partners.
16. It is our opinion and experience that “collective agreements contribute to improved flexibility and employment security and a reduction in labour market segmentation”. A good balance between flexibility and security can be achieved by giving the task of regulation of employment conditions and a major roll for the development of the labour market to the social partners.

17. Recruitment under permanent and temporary contracts is not only a question of labour law but rather a matter of active labour market policy and social protection policy. We already have European legislation in this area. What we need is to secure that it is not possible to speculate in poor and cheap conditions for employees. Neither part-time nor temporary contracts should be used to undermine social rights and labour law protection. Atypical contracts and employment conditions must not be used to circumvent collective agreements or labour law. Labour law must be extended also to cover atypical contracts and the relationship between employer and employee.

18. We agree with the Commission’s analysis of the consequences of the proliferation of different contractual or non-contractual forms with reduced employment and social protection rights – the emergence of a two-tier labour market. We share the picture of a labour market in which all kinds of atypical contracts and working arrangement have been increasing during recent years. The improvement of European labour law must aim to discourage this two-tier labour market.

19. There is an increasing focus on gender equality and we face more and more legislation in this area at EU level and at national level. The public sector labour market is dominated by women and the working conditions in local and regional government are therefore essential for the possibility of women to improve their position in the labour market. We agree with the Commission in the presence of a strong gender dimension to the risk of having a weaker position in the labour market. It is of decisive importance to find procedures to maintain and strengthen the position of women in the labour market if we shall reach the goal in the Lisbon Strategy regarding women’s participation in the labour market.

20. We do not share the opinion, that fixed-term employment has no significant gender perspective. Both in part-time and fixed-term jobs there is an overrepresentation of women. We see an increasing number of fixed-term jobs in the public sector in many countries. We can see the same development in the number of part-time jobs and this combination of part-time and fixed-term employment is problematic and deteriorates women’s opportunities for economic independence. The right to a full-time job of long duration is therefore essential for women and their opportunities for creating a life without being economically dependent on others.
Question:

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?

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?

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?

21. Sweden – as well as other Nordic countries – has good experience of a combination of unemployment benefits, an active labour market policy and strong relations between strong partners on the labour market. This combination gives the unemployed, and to a certain extent the employed too, opportunities to improve their chances of getting a new job by providing labour market programmes, adequate training and education and an economic security in a period of employment uncertainty. We warn against using the existence or development of this combination of public unemployment and social security systems and active labour market policy as a reason to undermine labour protection rules and legislation. It is not a task for the state to finance some employers’ speculation in using atypical contracts in order to avoid labour protection and working time rules and collective agreement rights.

22. SKTF would like to point out that this public system should be complemented by transition agreements between employer organisations and unions at national and local levels as has been done in Sweden. Employers and trade unions can cooperate and negotiate on measures to improve and increase employment, including, where appropriate, issues such as redistribution or reorganisation of working time, new working arrangements, etc. Social dialogue and agreements concluded by the partners concerning training, skills development etc. can promote a skilled, trained and adaptable workforce and by this create a better environment for job transition. Through training, skills development, procedures and guidelines for reorganisation, people can be helped to be more employable and into new jobs.

23. Organisations and services need to adapt to a constantly changing environment in order to reflect the needs and demands from the citizens. The best method to create an adaptable environment is of course when employers and employees see the need for change together and get the opportunity to identify and develop better ways of working.

24. Such agreements together with social protection systems, well-designed unemployment benefit systems, active labour market policies and education-
training opportunities provides good conditions for enhancing, at the same time and in a deliberate way, labour market flexibility and security for the employees.

25. Transition agreements can contain elements such as offering redundant employees training or possibilities to take leave in order to study, try another job or become self-employed/entrepreneur or giving the right to a new job in another part of the company or organisation. These transition agreements can be economically subsidized by the state in different ways such as individual tax deduction, economic support during training or study periods.

26. Mobility and adoption of changes can also be promoted by reducing the period an employee must have been working by a particular employer before being covered by e.g. pension rights, sick-pay schemes and other rights acquired during the first period of the appointment.

27. A major condition for maintaining the position on the labour market is a continual training and education. Surveys show that fixed-term employees are offered less adequate training and education than employees on full-time contracts. Employers are to a wide extent only willing to invest in training and education of permanent employees. But more education and adequate training is essential for fixed-term employees, and thus helping many women in obtaining a more permanent position on the labour market.

Question:
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?

28. We support the country-of-work principle as the fundamental principle when it comes to securing employment rights of workers operating in a transnational context. Employees must be covered by the labour law regulation and collective agreements in the country where they work whether they work on a permanent or temporary basis. A precondition for increased cross-border mobility is securing that cross-border workers do not lose acquired rights when they move from one job in one country to another job in another country.

29. Finally SKTF would like to point out, that the result of the hearing started by the Commission with this Green Paper must not end up with a recommendation of one particular labour law model and the regulation of this at EU level. SKTF also wishes to underline that the European Commission should prioritise the involvement of the social partners in any follow-up to the Green Paper.

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Eva Nordmark, president