Kommisjonen DG Employment

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Grønnbok om arbeidsrett

Vedlagt til orientering, LO’s syn på grønnboken om arbeidsrett.

Med vennlig hilsen

Kristin Larsen
TRANSLATION OF LETTER FROM THE NORWEGIAN CONFEDERATION OF TRADE UNIONS (LO-NORWAY), DATED 27 FEBRUARY 2007, TO THE NORWEGIAN MINISTRY OF LABOUR AND SOCIAL INCLUSION.

Green Paper:
Hearing concerning the EU Commission’s Green Paper,
Modernising Labour Law to meet the Challenges of the 21st Century,

I. Introduction
Reference is made to the Ministry’s hearing letter dated 1 December 2006, with 1 March 2007 as hearing deadline.

II. General Remarks

Increased flexibility is a main perspective in the Green Paper, without the term being distinctly defined. But a general feature is that the Green Paper focuses on a protection against dismissal with facilitates the possibilities of the enterprises to reduce the workforce, and on the responsibility of the public to solve problems during unemployment.

Flexibility may be linked to many different elements: employment security, to unemployment benefit, to labour exchange, to possibilities of variation with regard to work and content of post, prospects of promotion, to training of the workforce, to tripartism, to the role of the trade union movement, to social security etc. All these elements must be considered when flexibility is discussed.

In LO-Norway’s opinion, there is no contradiction between productivity, growth, flexibility and security for the individual worker. On the contrary, experience seems to show that a developed security system for workers is an important precondition for restructuring and economic progress. It is therefore too confining to build a future labour law on only some of the elements contributing to a flexible labour market.

Flexibility for one party in an employment relationship will in many cases imply restraint for the other party. It is therefore important to link flexibility to equal agreement parties, as it has been done in Norway with regard to agreements on departures from the normal arrangements with regard to working hours laid down in law (§ 10 – 12 of the Working Environment Act).

It is emphasised that the labour law system first and foremost is a matter of national concern. The Green Paper does not point out any course with regard to distribution between national and European tasks with regard to labour law. The Nordic model, which attends to the interests of workers in a good way, has also a positive impact with regard to flexibility, and it also places great responsibility on the social partners through the collective agreement systems. That the trade union movement has a strong position, is a central element in the Nordic model. The task of a European level labour law must first and foremost be to secure minimum rights – but without making such minimum rights lower the level. In addition, rights with regard to cross-border work and in international enterprises must be secured through European legislation.
In Norway, we have had comprehensive investigations and discussions on flexibility in connection with the recommendation of the Colbjørnsen committee in 1999 (Official Norwegian Report 1999:34), and the recommendation of (the majority of) the Borgerud committee in 2004 (Official Norwegian Report 2004:4). The Bondevik government went quite far in its proposals for increased flexibility in its draft new working environment act (Proposition no. 49 to the Odelsting (2004 – 05)), first and foremost with regard to working hour provisions and employment protection. The amendments to the new working environment act after the change of government in 2005 balanced the flexibility requirements considerably better in relation to the interests of the workers.

Many of the thoughts expressed in the Green Paper will – if realised in legislation or collective agreements – result in poorer employment conditions for workers. It will take us in the wrong direction if labour law shall be placed under the Lisbon objectives at the cost of the rights and welfare of workers. The Green Paper may in many ways be said “to take the party of the employer side”, and the policy which is more than indicated, will definitively have negative consequences for workers. The Green Paper is in this respect pointing in the wrong direction. Several of the questions of the Green Paper must, moreover, be said to be raised in a wrong way.

III. Particular comments with regard to equal rights issues

It is striking that the Commission does not see questions related to equal rights when a discussion is launched on a future labour law in Europe. The particular impacts of a possible increased flexibility on women’s work are not being raised as issues, and they have not been considered. The challenges with regard to unwanted part-time, wage differences, differences with regard to pensions, the adaptation of the world of work to family life etc. must be addressed as main challenges for the future labour law in Europe! LO-Norway would welcome it if the EU Commission would take on the task of being an instigator and a driving force with a view to finding more efficient instruments to promote equal rights.

IV. The questions raised in the Green Book

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

Creating social security must be an objective in the labour market policy. In this connection, it is important with far more than a certain economic security network. Reform work at the European level must aim at giving workers the right to permanent employment, a living wage, and rules attending to the working environment and security. Occupational injuries insurance should be introduced as a compulsory arrangement. Everybody must be ensured pay during illness, and financial security in case of unemployment. Maternity and birth leaves, and the distribution of the leave between the parents, must be secured, i.a., to contribute to partipation in working life and equality between the sexes. The old-age pension must be at a level which secures a dignified old age, and the workers must be secured the right to early retirement.

The right to paid educational leave combined with a good educational offer is a central instrument which meets the needs for restructrning, skills upgrading, and thereby also flexibility.
The trade union movement plays an decisive role when it comes to attending to and improving the conditions of workers. It must therefore be highly important to strengthen the European and the national trade union movements in a future labour law system. It is important to promote increased trade union membership and to improve the possibilities of union representatives of influencing all units in the enterprise organisations. Tripartism is of great importance for how the labour market is functioning.

Establishing collective bargaining at the European level between equal parties, willing to enter into a committing agreement relationship, is a required measure.

The Green Paper is not very successful, seen in relation to such objectives.

**Question 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?

The conditions of workers are best secured through nation-wide collective agreements. Collective agreements which generally are renegotiated every two years offer the possibility of a high degree of flexibility and adaptation to new challenges. Sectoral collective agreements in combination with local agreements offer the possibility of adaptation to the needs of various sectors and individual enterprises.

Nation-wide collective agreements with a high degree of coverage are probably the best means against labour market segmentation.

**Question 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?

The Nordic model, with a strong trade union movement, agreement regulation and tripartism, promotes the competitive power. A general labour law regulation should not contribute to segmentation between SMEs and larger enterprises.

Rules should be established for larger reconstructing which leads to mass dismissals which impose upon the enterprises a larger responsibility for restructuring measures benefiting the workers and the local communities concerned.

**Question 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?
Facilitating temporary employment or a weakened protection against dismissal is not an acceptable objective. On the contrary: permanent employment in a full-time position and with good protection against dismissal for everybody wishing such an employment relationship must be the general rule. Unwanted part-time or temporary employment must trigger off rights to permanent employment in a full-time position to a higher extent than what is the case today. Atypical work must be reduced – not normalised.

Labour market flexibility should and may be favoured on a different and more positive basis than through weakened protection against dismissal and increased use of atypical work. There is further no empirical basis for attributing the protection against dismissal so much importance which the Green Paper does with regard to necessary restructuring. In Norway, where the protection against dismissal is on average, the workforce has a great degree of restructuring ability.

A Finnish investigation\(^1\) of 27 scientific studies from a number of countries shows a higher incidence of psychological problems, depression, sleeping problems and exhaustion among the temporarily employed than among the permanently employed. The temporarily employed runs a greater risk of occupational injuries, and they report the most health problems. They also have less knowledge, and are to a lesser extent participating in training. They also have a more difficult point of departure with regard to criticsising the working conditions.

The National Institute of Occupational Health has, after reviewing working environment and health investigations, drawn the conclusion that a causal connection has been made probable between temporary employment and mortality. Even when taking account of both life style and health-dependent selection, short-term contracts imply a strain which gives a higher risk of death than permanent employment.

This indicates that the price for increased flexibility, which is paid by the workers and the state – not by the enterprises, is unacceptably high.

**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?

Several of the questions are interrelated. Reference is made to the above statements.

**Question 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?

Collective agreements are of great importance for restructuring work. There is reason to point out that successful restructuring processes presuppose that union representatives are given a large degree of co-determination.

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\(^1\) Virtanen and others, International Journal of Epidemiology 2005.
Collective agreements are also an important instrument for increased economic growth and productivity. Collective agreements are suitable for establishing a right to training, further and continuing training with regard to leaves and financial assistance arrangements. Such arrangements should generally have objectives beyond the needs of the enterprise, if they shall improve the restructuring ability in the labour market. Good reasons indicate particular supporting arrangements directed at workers with a low educational background or narrow skills. It is in this field important to ensure an interaction between collective agreements and public contributions in the form of a financial basis for educational measures, and the establishment of adapted educational offers.

The development of tripartism is a key factor also in this connection.

**Question 7. Is greater clarity needed in Member States' legal definitions of employment and selfemployment to facilitate *bona fide* transitions from employment to self-employment and *vice versa***?

Good reasons point towards the establishment that the term worker as per today in practice is defined in an inadequate and too narrow way. LO-Norway has earlier called for a definition of the term worker which includes those who in reality are performing a job under the leadership of others, unless they have a particularly independent position. As per today, hundreds, if not thousands of workers are classified as independent, as part of evasion of tax rules and important rules in the world of work. But this is also a problem in relation to the Working Environment Act and in relation to the collective agreement system. It should therefore be seriously considered to make the relationship of the workers with the enterprise *compulsory* in for instance the construction sector and in other fields where such evasions occur.

The Green Paper’s question about facilitating the transition from employment to self-employment is putting the cart before the horse.

**Question 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?**

Establishing minimum rights for everybody who is performing a job may at first sight seem positive. In many fields, the arrangements for workers are also adapted to the self-employed, i.a., old-age pension, sick pay (the National Insurance Act, § 8-34 and onwards) and part of the provisions of the Working Environment Act (§ 1-4). However, it is not the primary task of European labour law to further develop a dilution of the division between workers and self-employed, and there is hardly reason to believe that this will have positive impacts in relation to job creation.

LO-Norway is, however, positive to the establishment of minimum standards for employment relationships, and this must be considered to function particularly positively in the new EU member states, but one must prevent such minimum standards from weakening the rights of those who are above the minimum level.

**Question 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 responsibility in the case of sub-contractors? If not, do you see other ways to ensure adequate protection of workers in "three-way relationships"?

LO-Norway agrees that workers have too weak possibilities of enforcing their rights. Not least is the ability to enforce statutory rights too poorly developed. Particular problems arise in connection with cross-border work in this context. This may be illustrated with the provisions of the Posting Directive according to which proceedings may be initiated in the host country (Article 6 of the Directive) inside the hard core, but even if this is the case, recovery may be impossible, if there is no representative of the service provider in the host country. And, with regard to demands outside the hard core, the choice of law clauses will in many cases have the impact that the worker has to initiate proceedings in his homeland. A right should be introduced to initiate proceedings both in the homeland and in the host country on all sides of the employment relationship, and the recovery possibilities must be considerably improved, in order to ensure that the actual debtor protection of the employer comes to an end.

Generalisation decisions are also not equipped with efficient enforcement rules. The actual possibility of evading generalisation decisions (false employers) and problems of recovery of, for instance, wage demands, contribute to weaken the generalisation arrangement.

A strengthening of the Labour Inspection Authority, combined with extended authority to enforce pay provisions, will have a positive impact in this connection.

Joint and several liability. LO-Norway has repeatedly demanded an introduction of joint and several liability for the main contractor/contracting enterprises. This would strengthen the position of the workers and the enforcement of established rules. In addition, it would counteract the use of non-serious service providers which is flourishing in some sectors, and thereby contribute to more orderly competitive conditions.

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

Norway has rather liberal rules on contract labour. Today there are many financial incitements with regard to the use of contract labour. A measure would be to establish in general that contract labour cannot not be paid less that what is established in the collective agreement of the contracting company. Contracted workers should further be given a right to ordinary employment in the contracting enterprise. Authorisation arrangements must further be introduced which remove non-serious enterprises.

**Question 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?**
This is an old issue which should not be raised again. Legislation and collective agreements give comprehensive and sufficiently opportunity to flexibility with organisational agreements. Moving the agreement level away from organisational to individual level implies, due to the uneven power situation, freedom for employers and restraint for workers. The agreement model at the organisational level contributes to creating balance in the agreement relationship.

**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?

Reference is made here to the above answers. The content of the term worker should continue to be a matter of national concern.

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

Yes, as mentioned above, particularly in connection with question 9, the enforcement systems at all levels are too poorly developed with regard to the actual possibilities of workers of having their rights realised. Developing and improving the system must take place in cooperation with the organisations in working life.

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

Measures against undeclared work may have a favourable impact, also in relation to social dumping and otherwise poor working conditions. A far more restrictive regulation in fields with a larger share of non-serious enterprises would be welcome. Contracting should be subject to an acceptance and control regime which is considerably better than today’s, and the rules for contracting should be tightened. As per today, the penal law directed at non-serious enterprises is almost inactive. Another priority is needed, particularly with regard to crime affecting workers. The cooperation between the tax authorities and the prosecuting authority must further be developed to ensure better enforcement of the established rules. This requires increased resources to the enforcement authorities. Foreign enterprises registered in Norway and enterprises resorting to tax havens weaken the enforcement of a national set of rules.

Yours sincerely,

the **Norwegian Confederation of Trade Unions**

Roar Flåten

Einar Stueland

IH/EU/Grennboka Modernising labour law