Re: Green Paper on 'Modernising labour law to meet the challenges of the 21st century

Dear Mr Spidla,

The Equal Opportunities Commission (EOC) welcomes the opportunity to respond to the consultation launched by the European Commission on the need to review current labour law systems so that they are in step with the modern world of work.

The EOC is currently finalising an ESF co-funded investigation into Transformation of Work.1 This two-year investigation looked at what the economy, employers, and individuals want and need from work in the future and has found that introducing new ways of working can deliver benefits for all. We have commissioned new research including surveys of individual and employer attitudes to work in the future, and future work trends.

**Gender dimension of the Lisbon strategy**

The European Commission was right to stress in the *Roadmap for equality between women and men* that the gender dimension of the Lisbon strategy for jobs and growth must be strengthened. Lisbon employment targets call for a 60% employment rate for women by 2010. At present, it is at 55.7% and is much lower (31.7%) for older women (55-64 years old) in the EU. This needs to be addressed. The National Action Plans and evaluation should clearly include measures and recommendations in this field.

Women workers are the key to the productivity challenge facing all Member States. But women across Europe are still being prevented from making full use of their potential because of discrimination, stereotyping and difficulties of combining work and caring. The Green Paper on labour law misses this crucial link between gender equality, increasing productivity and developing labour law and workplaces that are fit for the 21st Century.

The Commission announced in the *Roadmap for equality between women and men* that the Commission aims to reinforce implementation of a gender perspective in the

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impact assessment of Community policies and legislation. The consultation and subsequent measures on the future of labour law is one of the areas were a gender impact assessment should inform and shape new policies.

Flexible working

The EOC's new report *Working outside the box* has uncovered a massive waste of talent across the workforce. 6.5 million people in Britain today could be using their skills more fully if more flexible working was available, either by working at a level at which they used to work or simply returning to the workforce. Often considered a problem limited to working mothers, the EOC's new findings show that this 'skills drain' affects almost as many men as women, and more non-parents than parents.

*Working outside the box* warns that rigid models of work are driving highly qualified workers into jobs below their skill level in order for them to have a life outside work. One in eight graduate women are working in low-level jobs and the proportion of graduates in high level jobs is falling, despite continuing graduate skill shortages.

The struggle to find a job that is compatible with life is leading to increasing pressure for a 'new deal' at work – increasingly, people want greater control over the hours and location of work, provided outputs are delivered, rather than reduced hours which currently often lead to low pay and poor prospects. This is not just because more women are working and men are becoming more active fathers. It is also because flexibility suits students and the increasingly ageing population.

The report also shows that pioneering employers are responding by transforming their work culture. Flexitime and home working are particularly popular and new technology is enabling companies to become more innovative in how they organise work. In return, employers are benefiting from better staff engagement and loyalty, meeting increasing customer demand for 24/7 products and services, and raising productivity.

Exchange best practice

The European Commission could for example encourage exchange of best practice amongst employers across the European Union. Too often flexible working is seen as a 'mummy track' of low paid, lower skilled part time jobs. The European Commission could identify innovative working, different sorts of flexible working across the EU and encourage the opening up of flexible working for senior management and higher skilled jobs.

The right to request flexible working for parents of young children, introduced in the UK and just extended to carers, has been a welcome start to changing workplace culture. The European Commission could consider looking into the feasibility of introducing, or encouraging Member States to introduce, this right to request flexible working for all workers across the European Union as part of the Lisbon strategy for jobs and growth.
Gender pay gap

The closing of the gender pay gap, which is a key policy challenge across the EU, is integral to the modernization of labour law. The gender pay gap is rooted in outmoded attitudes and practices – pay discrimination, occupational segregation, and women’s unequal burden of family responsibilities, which lower productivity. Improving the terms and conditions on which women are employed will make a major contribution to the fulfilment of the commitment to more and better jobs, but this can only be achieved by ensuring that initiatives such as job creation or life-long learning produce tangible rewards for women as well as men.

Response to some specific questions raised in the consultation paper:

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

- Aligning the gender dimension of the Lisbon strategy with the reform of labour law, so as to ensure that women as well as men benefit from sustainable growth and more and better jobs.
- Closing the gender pay gap.
- Reducing underutilisation within the labour market i.e. promoting policies that facilitate moves up the jobs and pay hierarchy, thereby reducing the proportion of women trapped in low paid, low skilled work, often on a part-time basis.

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?

- Yes, but:
  - There needs to be a more strategic approach to the reduction of labour market segmentation. Employers are still largely unaware of the impact of demographic changes on the potential pool of new entrants, and there is too little awareness of women’s aspirations – the belief that women work for ‘pin money’ is still widespread. Our research shows that the impact of labour market segmentation is often even stronger for ethnic minority women.²
  - The tensions between collective agreements and individual rights need to be recognized and taken into account. In working towards a closing of the gender pay gap, for example, the right to equal pay for equal work, as provide by Article 141, is an individual right, but one which may be implemented through collective agreements. If the collective agreement is defective, then the effect may be, on the one hand to deny an individual women her right to equal pay, and on the other, to frustrate employers’ efforts to deliver equal pay in an orderly fashion.

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?

- Consideration needs to be given to providing employers with incentives to change their operating practices, especially where short-term costs are involved. Subsidies, or other fiscal incentives, may help businesses to steer clear of pregnancy discrimination, or may help them to close the gender pay gap.
- Regulations that give differing rights to workers according to their length of service, hours worked, or wage levels are more difficult to explain, more costly to administer, and divisive as between the different groups

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?

- Giving women parity in negotiating for collective agreements covering rates of pay, access to training, and all other workforce matters would help to reduce inequality
- If the gender pay gap is to be closed then action needs to be taken to ensure that both men and women benefit from any improvements to wages contingent upon the attainment of enhanced skills

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?

- Any floor of rights to do with remuneration, such as minimum wage regulations, should take account of the gender pay gap and should strive to minimize this over a prescribed period of time

Yours sincerely,

Tijs Broeke
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