

ENSURING DECENT WORK FOR A DECENT LIFE FOR ALL - THE CHALLENGE FOR LABOUR LAW IN THE 21ST CENTURY

Solidar response to the EC Green Paper "Modernising labour law to meet the challenges of the 21st century", COM(2006)708 final

Solidar is an international alliance of social and economic justice non-governmental organisations (NGOs) working in development and humanitarian aid, social policy, social service provision and life-long learning. Solidar works in Europe and worldwide in alliance with trade unions, organisations of the labour movement and civil society for an equitable and sustainable world.

Solidar welcomes the fact that the Green paper on Labour Law opens the debate on how to best assure that in future the rights of all workers are protected and guaranteed. The way the Green Paper approaches the debate however presumes that Labour law needs to be 'modernised' in order to meet the challenges of growth and competitiveness. In the following Solidar wants to present its analysis of the main challenges labour law needs to meet today, namely the question of how to ensure efficient labour law protection for all workers disregarding their employment status in text context of changing work environments and increasing precarity. Mainly women and migrant workers are often forced into poor quality jobs or undeclared work, young and elderly workers face discrimination in employment, people struggle with atypical working arrangements and working hours, as well as insufficient care services for dependant relatives. In the context of a global economy the prime responsibility of public authorities is to ensure that labour law offers effective protection of individual and collective rights.

People in Europe recognise the potential of a strong, social and just EU in a globalised world. Today's challenge is how to reconcile the move towards economically competitive societies in a globalised world with the adequate social protection needed by citizens. This is the only way to ensure that people don't disconnect from the EU, but want to become involved in the further construction of the European Union. An active civil society also has an obligation to highlight the shortcomings of European integration. Solidar has since the beginning of European integration advocated strongly for social and economic justice through social policies, high quality social services and lifelong learning in Europe. At a time of lower economic growth, it is now more important than ever to speak out against cutbacks in social security.

Priorities for a meaningful labour law reform agenda – Decent work for a decent life for all

The primary challenge for labour law in the 21st century, as the Green paper puts it, is not how to ensure growth and competitiveness, but how to create circumstances in which employment fosters more inclusive societies. Strengthening growth and competitiveness can never be an end in itself, but as a means to contribute to the well-being of individuals and the society as a whole.

For Solidar, labour law is about protecting efficiently individual and collective rights and promoting fundamental values. It should aim at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and

dignity. In today's globalised economy, international labour standards are essential components for ensuring that the growth of the global economy provides benefits to all. EU developments in relation to employment need to be designed in conformity with EU international commitments, and in particular the decent work agenda of the ILO.

The concept of decent work for a decent life – in Europe and worldwide – is crucial in this context. As the ILO defines it, decent work sums up the aspirations of people in their working lives. It involves opportunities for work that are productive and deliver a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.

The concept has lately gained importance in the European context, not least with the European Commission's communication "Promoting decent work for all: The EU contribution to the implementation of the decent work agenda in the world" (COM(2006)249). Compared to many other countries in the world, the fundamental pillars of decent work are in place in Europe: anti-discrimination directives and the principle of gender equality, the right of every citizen to health care and social services, labour laws. Social dialogue with employers and trade unions is well established and safeguards important labour rights.

However, labour markets in Europe are changing and more and more people in Europe are working under precarious working conditions, under part- or short term contracts or in the informal economy. Precarious working conditions are accompanied by limited workers' rights, less social protection and security. And still today it is mainly groups, such as migrants and women who are primarily affected by such precarious – flexible – working arrangements. Gender pay gaps are prevailing and dismantle the belief that decent work for all is a reality in the EU.

The concept of decent work therefore needs to be a clear point of reference in the debate on the reform of labour law and terminologies such as "good work" and "quality work" do confuse the clear commitment rather than foster it.

Promoting flexicurity?

In January 2005, under the Austrian Presidency, the European Union launched a debate on flexicurity. The debate is based on the assumption that when combining flexibility and security the concept can profit both, employers and workers through promoting growth and jobs. The Danish Model is always presented as flexicurity success stories, without close analyses of the specific circumstances in these countries.

The Nordic flexicurity Model is based on strong social security and broad welfare provisions, active labour and educational policies and a long tradition of social dialogue. The Nordic flexicurity Model is furthermore anchored in a culture of the provision of high quality social services for all, ensured access to services of general interest and high investment in training and education.

Discussing flexicurity solely from the point of view of "modernising" labour law without taking the essential elements of investment in social services and services of general interest and education and training into account, as well as not analysing the context of strong social dialogue in Denmark, means failing the concept from the start. Without all necessary components of security in place, the so-called flexicurity model risks to solely increase flexibility in Europe and as a consequence to create more precarious work.

Only if all necessary pillars of the Nordic flexicurity model are in place, can the concept be successful. Flexibility in the labour markets has been increasing in the last years, it is now time to put in place the necessary measures not ensure the guarantee of workers rights in all forms of employment, as well as the necessary accompanying measures such as investment in education and training and services of general interest.

The Green paper on the other hand starts of with the assumption that flexicurity is the only way forward as it states that the aim of the Green Paper is to “modernise labour law to enable flexicurity”. Enabling flexicurity cannot and should not be the AIM of any labour law reform.

Effectively eliminating discrimination in the labour market

Labour law must guarantee the full implementation of European and national legislation promoting equality on the labour market. Active labour market policies that are not discriminatory and interventionist need to be promoted.

What is need is a **set of measures that actively addresses inequalities in the labour market**, eliminating discrimination in recruitment procedures, ensuring access to promotion and training, as well as regarding payment as well as proper protection from victimisation when people claim their rights.

The implementation and enforcement of European gender equality legislation at national level must be made a priority within the EU. Measures are needed that tackle the manifold gender gaps in the labour market. Overall, the European economy is still suffering from an under-representation of women in the labour market and gender-segregated labour markets, as well as a high percentage of women working in part-time employment. In this context, family planning, child day-care, benefit and employment security in case of maternity, as well as policies aimed at reducing the pay gap between the sexes and helping more women into full-time employment, are essential. In order to be effective, such measures need to be accompanied by affordable, accessible and high-quality social and care services of dependent persons.

Equal access to training and life-long learning for all needs to be insured through labour law. The Danish example shows clearly that a real balanced flexicurity approach needs to be based on strengthened investment in high-quality training and life-long learning measures. Life-long learning is also crucial in reaching out to those furthest away from the labour market.

Furthermore, recognition of qualifications and diplomas needs to be made easier in all work areas to eradicate discriminatory barriers for migrant workers. Many migrant are overrepresented in low-skilled occupations despite high qualifications in their country of origin.

More flexibility in recruiting people?

Labour law needs to be inclusive and not create further disaggregated labour markets. Reforms in employment should aim at improving rights for those in precarious employment, without reducing existing rights.

Labour law must apply equally to all sectors of the economy. Collective bargaining can provide additional rights but sectors where workers are traditionally less organised should receive extra attention from public authorities.

Initiatives like the French “Contrat première embauche” were said to aim at fighting the high level of unemployment among young people but would in practice have generated new forms of discrimination, namely longer trial periods of up to two years and the possibility of being dismissed without any justification. It was an attempt to liberalise the labour market without any additional security being introduced.

In coordination with social protection systems, labour law should support active policies bringing the people furthest from the labour market back into employment. Tax incentives for employers to recruit certain groups of workers can be one example of such measures promoting employment without endangering the rights of the employees.

Question of different employment status

Labour law must be inclusive reaching all people active in the labour market, irrespective of their employment status. Labour Law should promote regular employment relations and limit the variety of atypical employment status to ensure a clear and transparent situation.

The approach taken in the (currently blocked) directive on temporary agency workers ought to point the way forwards as it states reconfirms that people with atypical contracts must not be treated less favourably, in terms of working conditions (working time, rest periods, holiday entitlements, pay, individual and collective rights), than a permanent member of staff in a comparable position.

More flexible working times to promote employment?

Labour law must guarantee reasonable and predictable working time for both women and men to ensure the reconciliation of work and private life. Tailor-made patterns of flexibility can be essential in providing a way back into employment. Adapted time-tables or working conditions can provide opportunities for people who otherwise have difficulties to integrate into the labour market.

One element of ensuring that flexible working time arrangements do not hamper the conditions of the employee is to guarantee that parental leave, career breaks and part-time employment should be included when calculating pension and insurance entitlements.

Transnational workers’ rights

Mobility of workers across Europe is a fundamental right and closely linked to the European Union’s expressed wish to strengthen the internal market. However, migrant workers as well as citizens of the new member states are facing barriers to free circulation that need to be addressed.

Implementation –a question of political will

Labour law must be better enforced and it must fight effectively against disguised employment and undeclared work. European initiatives on labour law will remain ineffective, if the national level doesn’t reinforce supervision and enforcement securing individual and collective rights of workers.

In the context of the debates around the Green Paper, it is important to note that there are Labour law initiatives currently blocked in the decision-making process of the European Union (Portability of pension rights, working time and temporary agency directive). Rather than discussing new initiatives on how to make room for more flexibility in the labour market, the fact that these initiatives - that aim at improving the

situation of workers in Europe - are blocked needs to be actively addressed to reinforce the credibility of the EU concerning the reform of labour law.

Discussing the reform of labour law, all current initiatives need to be taken into account. It is surprising that the Green paper does not refer to an initiative currently in the process of being drafted by the European Commission, namely the forthcoming proposal for a directive on 'minimum sanctions for employers of illegally resident third-country nationals'. Even though the issue is clearly a question of labour law, the directive is been drafted by DG Justice and Home Affairs and it is unclear how this process feeds into the Green Paper or vice versa.

Combating undeclared work

The problems of enforcing labour law become most striking when looking at the phenomenon of the so-called informal sector. Irregular employment is still wide spread in Europe and the working conditions in these employment situations often against any fundamental rights. Today a significant proportion of irregular employment in Europe is taken up by migrants. While many are exploited by virtue of their undocumented or uncertain status, a significant number are legally resident third-country nationals in the EU.

Labour law must strengthen the role of labour inspection in its primary duty of protecting workers and not enforcing immigration law. Fundamental rights of all workers, regardless of their status or nationality must be guaranteed. This protection must include and undocumented migrants. All individuals residing in the EU are granted fundamental rights at work, acknowledged in the European Charter of Fundamental Rights on in international instruments. The lack of enforcement of these rights leads to exploitation and a situation of modern slavery.

The European Union and its members states should also ratify the UN Charter for the protection of migrant workers.

solidar is an international network of non-governmental organizations (NGOs) working in development and humanitarian aid, social policy and social service provision.

solidar promotes economic and social justice in Europe and worldwide by working in alliance with trade unions and labour movement organizations.

solidar is a member of the Platform of European Social NGOs and of the Civil Society Contact Group that launched the act4europe.campaign on the Convention on the future of Europe



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