



**EAPN response to the Green Paper**  
**'Modernising Labour Law to meet the challenges of the 21<sup>st</sup> century'**  
**presented by the Commission**  
**- 30 March 2007 -**

**12 EAPN Key Demands**

- Reforms to labour law should be subject to an open debate leading to a renewed wide-ranging agreement involving all stakeholders.
- Social NGOs, voicing the interest of the most excluded, should be part of such a debate at EU and national level, together with Trade-Unions.
- Progress towards more flexibility should fit workers' needs, and deliver an inclusive labour market which is accessible for all.
- The improvement of the situation of the most excluded should not mean lowering other people's rights: the language of social inclusion should not be used to undermine workers' rights.
- Labour Law reforms should be based on fundamental rights and support the implementation of the right to decent work for all.
- Labour Law reforms should be instrumental in implementing a balanced approach to economic, employment and social objective and be considered as part of an integrated approach together with Social Protection
- Any Labour Law reforms should deliver in relation to current poverty-related challenges of working poor, inadequate income and access to employment.
- Labour Law reforms should be driven by the political will to deliver a balanced approach to flexicurity.
- Labour Law reforms should first improve the protection of the most vulnerable
- Labour Law reform should be instrumental in building pathways into the labour market, including supporting access to lifelong learning and supporting social economy initiatives providing employment integration.
- Labour Law reforms must support positive action in the interest of the most excluded from the Labour Market.
- The EU level is a relevant level for stimulating convergence, towards the promotion of quality of work and decent work.

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## A - General remarks

### *The initiative of the Green Paper itself*

1. **We welcome a debate on labour law**, and we link it to the way the labour market functions in a globalised world and in socially-divided societies in Europe. As an organisation representing the interests of people experiencing poverty, we welcome the opportunity to spell out the specific concerns, needs and expectations of those who are either furthest from the Labour Market, experiencing the worst quality jobs, or who are victims of discrimination. Their needs differ from the mainstream of our society. As an organization fighting against the structural causes of poverty and for a cohesive society, we welcome the opportunity to express our vision of how an inclusive labour market should be built.
2. **We welcome the openness of the consultation** process in itself ('responses by Member States, social partners and other stakeholders will be considered'). We think the Commission is right to complement the existing dialogue with social partners with dialogue with civil society. We also take this openness as a recognition, for which EAPN has been fighting for years, that employment issues should be addressed in relation to their social impact and be dealt with also by social NGOs. EAPN is also fully involved in the contribution of the Platform of Social NGOs to this Green paper.
3. Though welcoming the fact that the content addresses a broad range of issues, we regret the restrictive and technical nature of the questions raised. EAPN members found it difficult to answer some questions directly, as the wording was too remote from their day to day work. We would also underline the fact that although Labour Law is being reformed in many countries, involving the introduction of new laws and regulations, people experiencing poverty and organizations representing their interests are generally not involved in structured debates on this issue. Even in countries where flexibility is a concrete issue **there is no clear debate on flexicurity as such.**

In France there seem to be two distinct discussions: one on the employment security of people affected by industrial restructuring, and, one on in-work poverty. In the UK, the vagueness of the notion of 'modernisation' does not help to bring any clarity in the debate. Tony Blair recently said 'today's European model has to be less about traditional forms of protection and more about modern forms of empowerment'. Many Anti poverty NGOs harbour the expectation that 'flexible working practices' will mean an opportunity for workers

to have more choice, work from home and have a better work/life balance, when the real agenda is about weakening labour legislation, job protection and Trade Union collective bargaining with the risk of increasing precarity of employment contracts. Some warn against the risk that this consultation process will help UK "foist weak labour Law" in the EU. A 5 year programme has been set up jointly by the Trade Union Congress and the Confederation of British Industry, called Work Wise UK, to promote wider adoption of flexible working. The security aspect, however, does not appear to be debated anywhere outside of the anti poverty organizations.

In Austria, the debate on this issue started in 2006, during the Austrian presidency, when Commissioner Spidla delivered his speech on "flexicurity" at an Informal Ministerial Meeting in Villach. In the speech, Commissioner Spidla said that "we can learn a lot from Austria, because Austria has succeeded in combining labour market flexibility and social security". Denmark and Austria are often used as best-practice examples regarding "flexicurity". Yet: the two systems cannot be compared. The social security system in Austria rests on a weaker footing than in Denmark. The negative impact of non-standard employment, which is still rising, is not part of the discussion. There are also problems regarding social and material opportunities for inclusion. The level of income in these "flexible" contracts is still lower than in fixed contracts. There is more instability and discontinuity and the danger of labour market exclusion is very high. This only highlights how far Austria is from a really "universal" security system like the Danish model.

4. EAPN members, many of whom are active in work integration projects, are highly concerned by the evolution of the labour market. They are willing to be part of shaping reforms likely to deliver effective pathways to employment for people experiencing poverty and social exclusion, as one of the roads out of poverty. While internal flexibility, related to workers needs, is a development we would support, external flexibility as a way to undermine job protection, making it possible to hire and fire without due justification and compensation, is not acceptable.

The present contribution does not strictly follow the questions of the consultation, but provides more general input, backed with some arguments and examples shared by our members' organizations.

### *The orientation the Green paper is taking in relation to the current context*

5. Our contribution to this consultation is underpinned by the willingness to progress positively with **regard to the current EU context**, raising concerns that are regularly voiced by EAPN members. Lack of available jobs, bad quality jobs including in-work poverty and barriers to accessing employment for people experiencing poverty, are the realities on the ground. Harsh and blaming attitudes are often attached to questionable activation policies, some of them forcing people into poor quality jobs, with the result of pushing some people deeper into poverty and social exclusion. At the EU level, after a priority given to the 'job first approach', a consensus has recently emerged in favour of a better balance and greater interaction between the Employment, Economic and Social objectives, with promising conclusions from the Spring Summit. We welcome such an evolution and we expect the outcome of the flexicurity debate to be in line with this new consensus.
6. We are conscious that the present consultation is a milestone in the development of common principles on flexicurity, as part of the broader debate on Labour Law 'modernisation'. While welcoming the balanced vision of flexicurity promoted by the Commission, **EAPN members fear that it is implemented at national level more in terms of flexibility first**. Indeed, the pressure from business for less red tape and more flexibility to face globalization and deal with restructuring is sensible (as illustrated by the outcome of Mutual learning seminar on flexicurity EAPN was involved in last autumn), and the reality is that flexibility has been increasing before security, as pointed out by the Commission. **What we need from Labour Law is an effective tool for protecting workers, and implementing balanced flexicurity**, referring to the highly ambitious and comprehensive vision of the Decent Work Agenda, promoted by the Commission<sup>1</sup>, and not a tool only to achieve short term objectives for business.
7. With regards to the above mentioned context, it is important to state that even if some flexibility is needed, it should not be the ultimate objective for the whole of the EU economy. A balanced flexicurity approach should address the needs and difficulties that have been highlighted in the development of atypical forms of employment, but also **put limits on the**

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<sup>1</sup> COM(2006)249 - Promoting decent work for all: The EU contribution to the implementation of the decent work agenda in **Page 6**

**development of flexibility**, in line with the conclusions of the Berlin Informal meeting of Ministers for Employment and Social Affairs ("Regular employment relationships are indispensable. MS are called upon to strengthen standard working relationships (...) and to limit their circumvention by atypical employment relationships"). Also it is doubtful that changes in the labour law will be a panacea and by themselves deliver more growth and jobs. The role of macro economic tools such as public budgets should also be considered in the debate on how prosperity could be delivered in the EU.

8. In the light of the above mentioned political framework, EAPN would like to warn against the assumption that highly flexible low quality jobs are necessary to allow people furthest from the labour market to enter the labour market (see in the Green Paper, page 8: *"such jobs (i.e. short term, low quality jobs with inadequate social protection) may however serve as a stepping stone enabling people often those with particular difficulties, to enter into the work force"*). This only serves to legitimize the reconciliation of the objectives of social cohesion and of the business demands around the acceptance of poor quality jobs. If anybody needs quality work, it is people who are furthest from the labour market. Setting the interests of 'insiders' against 'outsiders', with the aim of diminishing the level of protection of 'insiders' for the so called benefit of 'outsiders', will not contribute to greater social cohesion. **The language of social inclusion must not be used against workers' rights.**

## B- EAPN demands regarding Labour Law reform

*There is a need for Labour Law to adapt in order to play its protective function regarding the development of precarity and to contribute to an inclusive labour market.*

9. There is obviously a need that Labour law is reformed and enforced in order to **guarantee rights and security for people under highly flexible working conditions**. Some attempts are made in this direction. The efficiency of such initiatives to deliver adequate security for the most vulnerable should be tested, and improved as needed.

In France, legal systems aiming at giving more security to precarious workers have been established: "sociétés de portage" (which turn free lance earnings into salaries and then give free lance workers access to the employee's statute), and employers' groupings. Employers' grouping offer one full work contract to someone working for different employers, thus avoiding a multiplicity of part-time work contracts. However although this represents an improvement in the support for precarious workers, these legal arrangements do not prevent all the consequences of precarity. Such experiences should be evaluated and strengthened in order to provide adequate security.

In Austria, there are several labour market laws that explicitly or implicitly help in shaping security in flexible working conditions. In 1992, the Severance Act came into force which guaranteed severance pay, holiday pay and other measures of equality under labour law for atypical forms of employment. However, there are still no minimum standards or minimum security for non-standard employment.

10. There is obviously a need to protect migrant workers, who are in general over-represented in flexible work situations. **Particular attention should be paid to the situation of undocumented workers**, who have been at the forefront, when it comes to flexible and atypical contracts, and the first to suffer from exploitation and abuse. The enjoyment of labour rights should not be linked to legal or immigration status. Labour law definition and enforcement should support undocumented workers in exercising the rights they are effectively entitled to, once they have entered into a labour contract (see PICUM comments on the Communication from the Commission on "Policy priorities in the fight against illegal immigration of third-country national COM 2006(402) final, 12 February 2007"). Labour rights

should be enjoyed by all workers, including all migrant workers, documented and undocumented, and it is essential that everyone feels secure in accessing these rights without fear, real or perceived, regarding their residence or legal status. In particular 'bridging visas' should be given to any migrant who becomes undocumented through no fault of their own, so that they can seek redress over infringement of their labour rights, including in situations of exploitation.

11. Reforms currently discussed in many Member States are mainly being addressed in two ways in relation to the multiplicity of employment status: **aiming at simplification for the majority, and creation of new status for target groups.**

The trend for further **simplification and unification** is visible in different Member States, and aims at unifying different types of working contract to which differences of rights and obligation, in terms of flexibility and security, are attached. Whilst such reforms may bring welcome increased transparency and counter segmentation of the Labour Market, a key issue is whether they will level up the situation of the most disadvantaged or if this will go together with a review of existing rights, and further demand for flexibility.

In Luxembourg, social partners and government are trying to harmonize the very different working statutes of the 'workers' on the one hand and of the 'employees' on the other hand. For example 'workers' are entitled to better social protection in case of sickness than 'employees'. But with no budget attached to such a reform, the result is questionable.

The reform undertaken in the Czech Republic, from the 1st January 2007, has brought an important internal flexibility, and also a major component of security. Indeed, there is now a stronger principle of liberty in employment contracts, which is quite flexible (For example: over and above the essential terms of a contract, it is possible to negotiate other conditions and 'working hours accounts' which allow the length of the working day to be accommodated to the needs of employers). At the same time security of employment has been extended, with the disappearance of 'avocation' contracts (which were related to second additional jobs, with very limited protection against dismissal).

12. Parallel to the simplification there is a tendency to create **new types of contracts for some target groups**. These reforms should really implement positive action for disadvantaged groups, and not undermine employment protection or create more segregation. **It is crucial that reforms take due account of the specific needs of social economy providing work integration, together with facilitating pathways towards the ordinary labour market.**



In Luxembourg, the mobilization of Trade Unions and young people has prevented a change planned in the access of young people to unemployment benefits. A specific type of contract ('contrat d'initiative à l'emploi') for jobs subsidized by the State has been created for people under 30

Social organizations active in social economy providing work integration in Luxembourg are highly concerned by a law on unemployment currently under discussion. According to this law there should be a clear distinction between people likely to get back on the labour market, and people who can not: the first would benefit from reintegration into the economic sector, whilst the second would benefit only from action that is out of the economic competitive market.

In Austria, the most vulnerable people on the labour market are not part of the flexicurity debate. At the moment work integration organizations are being cut and they have to fulfill their aims of work integration within unrealistic time periods. On the one hand, these people are pressurized to find work, whilst on the other hand no investment is made into job opportunities for them in the social economy (which is not part of any debate) or in the first labour market. One small step in the right direction is the introduction of a minimum income of € 1.000 for transitory workers in work integration organizations, which was not the case before.

13. The EU level is a relevant level to stimulate Member States responses to the new forms of precarity that have developed, in a convergent way so as to **avoid social dumping**.

The EU should stimulate further progress through legislation or incentives to promote quality employment, in relation to working time, work-life balance and safety at work. The reality of working poverty in the EU should also be addressed effectively, by ensuring decent wages and income

The EU could stimulate progress on some concrete issues, notably:

- Give content to the European agreement on **fixed-term contracts** by, for example, setting a minimum duration for such contracts and making it unlawful to use them to replace workers who are off on short-term absences, for which organised and regulated temporary agency employment should be preferred.
- Ensure the effective implementation of European Anti-Discrimination law.
- Make recommendations on temporary agency employment, in particular representation of temporary workers' rights to leave and training, observance of skill levels and experience,

management of casual workers' allowances, or even converting such allowances into wages.

- Make recommendations on pay for internship
- Make recommendations on the use of self-employed workers.
- Make recommendations on the enforcement of labour law in public sector.

***Labour law should be part of building a fair and balanced flexicurity, likely to deliver more and better quality jobs.***

**14. What would be for us a fair and relevant modernization of the Labour Law ?**

We defend a vision of 'modernisation' which meets the needs of an open economy and the workers through the implementation of social market economy. The conditions and circumstances for the labour market to function have changed rapidly, and it is necessary to take into consideration these challenges, address the impact which is already visible, and take into account the different social standards and taxation systems in Europe. In order to implement a social Europe, **the European labour market should be regulated by newly negotiated and mutually agreed rules and regulations**, ensuring a balance between flexibility and security, and based on the recognition of employment as a **social right**.

Europe would not benefit from a labour law that favours flexibility at the cost of security for employees, or does not take account of employees' need in terms of flexibility. Such a labour market will have inherent social conflicts, that is damaging to the effectiveness of the labour market and it is not congruent with the social values of Europe.

**15. The current system of workplace-related security measures should be replaced by broad general transverse labour market measures covering the employee's life long involvement with the labour market.** Europe must build up a labour market and security system that can guarantee a **high level of social protection, including access to Minimum Income and high level of services** under different employment conditions and life cycles, allowing employees to keep their social rights under all conditions.

**16. Inclusive labour market should take account of new barriers from the labour market and develop learning.**

As mentioned in the Green Paper, the labour market creates winners and losers. On the contrary in a society based on fundamental rights, the labour market must be created in a

way that gives all people the right to a decent income and support to play an active role in society. Knowledge-economy or learning societies driven by information and knowledge may create even higher barriers and marginalise large groups because of lack of access to knowledge and learning.

In all European countries, the unemployed are disproportionately drawn from the low-skilled, and it seems that one main factor that increases the risk of social exclusion is the low qualification of the persons affected. Therefore we need a labour market that comes closer to people and which compensates for the lack of resources and qualifications, which people furthest from the labour market suffer. In this perspective, labour laws should also consider the need for investment in human resources and life long learning as a precondition for a sustainable labour market, as well as the necessity to invest in on-the-job training for all employees, in a context of strengthened security.

In Luxembourg a new law in December 2006 made provision for on-the-job training, with the intention of minimizing the time spent on unemployment after restructuring. However this provision, which is not backed by more security measures, is being considered as a way towards promoting more external flexibility and less security for the employees.

At the same time it should be born in mind that the knowledge part of our economy cannot provide jobs for everybody, and that other stimulus must be given to create jobs that are accessible for many of the people who are currently excluded from the labour market. The services sector is an area where Labour Law could support job creation (for example through legalisation relating to legalizing current undeclared work, supporting inclusive entrepreneurship/ self employment etc...).

17. **Positive actions should be developed to compensate for the structural barriers that some groups are facing in relation to the Labour Market.** So far all attention has been put on getting vulnerable groups to adapt to the demands of the labour market through activation schemes and by putting obligations on the individual unemployed to meet the expectations and qualification demands of the labour market. We support policies of activation and education targeting excluded groups. However, the general assumption that excluded people need economic incentives to move towards the labour market has focused almost exclusively on individual efforts and neglected the fact of structural barriers to the labour market for these groups.

Some of these structural barriers must be broken down by efforts made from the labour market itself. If people furthest from the labour market are to have a chance to find a job, it takes co-operation and adaptation from the labour market.

People furthest from the labour must climb a ladder that is missing too many rungs. The lack of instruments is the greatest shortcoming for realising the political goal of getting more excluded people into employment.

In the field of anti-discrimination, the 2000 EC Directive established a framework for equal treatment in employment and occupation, allowing for positive action. For some groups, for instance physically disabled people, society has to a certain extent accepted the need for compensatory arrangements to fulfil the political objective of achieving their participation in the labour market. But still more should be for other vulnerable groups (for example younger and older workers). More needs to be done to promote a broader understanding of the need for positive action in general for excluded people.

***Labour Law reform should be agreed and delivered through broad public debate and collective agreement.***

18. Reforms must be implemented on a collective basis encompassing all actors in the labour market

What we are witnessing is a renewed questioning of the progress achieved through social bargaining. New value-based rules, likely to improve the situation of people experiencing poverty as well as delivering greater social cohesion, should be shaped through a **new agreement based on broad social and civil debate and collective bargaining involving all stakeholders**, including Trade Unions and social NGOs. Such an issue cannot be dealt with only at the targeted level of branches or companies. In this respect, we demand that governments ensure that structured debate is happening at national level. It is also crucial that labour law reforms that have such a key impact on the life of people experiencing poverty, their access to Social Protection and more generally on social cohesion, are discussed at national level in the relevant EU processes, including the European Employment Strategy and the Lisbon strategy, as well as in the Open Method of Coordination on Social Protection and Social Inclusion. We expect the EU institutions to give clear recommendations in this direction.

19. Labour Law reform should also be considered within an integrated approach together with the Active Inclusion agenda. The risk of having the Active Inclusion agenda considered as a specific process for the most excluded, when flexicurity is aiming at a more mainstream public, should be avoided. The flexicurity agenda should also deliver improvement for the most excluded. Flexible work patterns should also be shaped to be helpful for some of the most excluded, as part of tailor-made personalised approaches. As an element of the flexicurity concept, Labour Law should help to 'establish a link to the Labour Market through job opportunities or vocational training' as defined in one of the three elements of the policy mix defined by the Commission as Active Inclusion<sup>2</sup>.
20. Flexicurity can only deliver social cohesion if sufficient means are devoted to security and life long learning. If flexicurity is to deliver in terms of competitiveness, business should also be involved in bearing the costs of increased security and learning opportunities, and in delivering in terms of job creation.
21. Social NGOs should be recognized in their role of voicing the concerns of People Experiencing Poverty and Social Exclusion in relation to employment issues, as well as in their role of counselling, supporting and defending them in relation to their situation on the Labour Market.
- Trade Unions, together with Social NGOs, should ensure that issues which are crucial for the most vulnerable people (such as discrimination in access to employment, situation of trainees etc...) are addressed in the design and the implementation of employment policies.

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<sup>2</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions concerning a consultation on action at EU level to promote the active inclusion of the people furthest from the labour market, 8.2.2006.