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

2007/2023(INI) - 22/11/2006 - Non-legislative basic document

PURPOSE: to launch an EU-wide public debate on how labour law can support the Lisbon Strategy's gaol of achieving sustainable growth with more and better jobs.

CONTENT: the future challenge for labour law is to offer both flexibility and job security. The drive for flexibility has given rise to increasingly diverse contractual forms of employment, which can differ significantly from the standard contractual model in terms of employment and income security and the relative stability of the associated working and living conditions.

In 2003, the "European Employment Task Force" observed that a two-tier labour market might emerge divided between permanently employed "insiders" and "outsiders" – outsiders being those who are unemployed and detached from the labour market as well as those precariously and informally employed. The Task Force asked the Member States to assess, and where necessary alter, the level of flexibility provided in standard contracts in areas such as period of notice, costs and procedures for individual or collective dismissal or the definition of unfair dismissal.

A proliferation of different contractual forms has emerged in the absence of a more comprehensive adaptation of labour law and collective agreements to rapidly changing developments in work organisation and society. By availing of non-standard contractual arrangements, businesses seek to remain competitive in the globalised economy by avoiding inter alia the cost of compliance with employment protection rules, notice periods and the costs of associated social security contributions. Administrative burdens associated with the employment of regular employees also have a significant influence on employment growth, particularly in small firms. Non-standard as well as flexible standard contractual arrangements have enabled businesses to respond swiftly to changing consumer trends, evolving technologies and new opportunities for attracting and retaining a more diverse workforce through better job matching between demand and supply. Workers are also afforded greater choice particularly as regards arrangements for working time, increasing career opportunities, a better balance between family life, work and education as well as more individual responsibility.

Fixed term contracts, part-time contracts, on-call contracts, zero-hour contracts, contracts for workers hired through temporary employment agencies, freelance contracts, etc., have become an established feature of European labour markets. The share of total employment taken up by those engaged on working arrangements differing from the standard contractual model as well as those in self-employment has increased since 2001 from over 36% in 2001 to almost 40% of the EU-25 workforce in 2005. Part-time employment, as a percentage of total employment, has increased from 13% of total employment to 18% in the last 15 years. It has accounted for a larger contribution (around 60%) to employment creation after 2000 than full time standard employment. Part-time working remains predominantly a feature of female employment – with nearly one-third of women in employment having a part-time job compared with only 7% of men. Fixed-term employment has increased as a percentage of total employment from 12% in 1998 to over 14% in 2005 in the EU-25. Unlike part-time work, fixed-term employment does not exhibit significant gender differences.

Self-employment is also providing a means of coping with restructuring needs, reducing direct or indirect labour costs and managing resources more flexibly in response to unforeseen economic circumstances. It also reflects the business model of service-oriented business delivering completed projects to their customers. In many cases it reflects a free choice to work independently despite lower levels of social

protection in exchange for more direct control over employment conditions and terms of remuneration. Self-employed workers in the EU-25 numbered over 31 million in 2005 or 15% of the total workforce. Those who are self-employed on their own account and without employees constitute 10% of all workers in the EU-25. Although agriculture and retailing still hold the larger share of this category, it is a growing feature of the construction and personal services sectors associated with outsourcing, subcontracting and project based work.

However, there is evidence of some detrimental effects associated with the increasing diversity of working arrangements. There is a risk that part of the workforce gets trapped in a succession of short-term, low quality jobs with inadequate social protection leaving them in a vulnerable position.

The recent Employment in Europe 2006 report refers to findings that stringent employment protection legislation tends to reduce the dynamism of the labour market, worsening the prospects of women, youths and older workers. The report underlines that deregulation "at the margin", while keeping stringent rules for regular contracts largely intact, tends to favour the development of segmented labour markets with a negative impact on productivity. It also stresses that workers feel better protected by a support system in case of unemployment than by employment protection legislation.

The Integrated Guidelines for Growth and Jobshighlight the need for the adaptation of employment legislation to promote flexibility combined with employment security and reduce labour market segmentation. Social dialogue also plays a key role in framing collective and/or firm level solutions enabling "insiders" as well as "outsiders" to make successful transitions between different employment situations while also assisting businesses to respond more flexibly to the demands of an innovation-driven economy and to changes in the competitive landscape brought about by restructuring.

Other policy components of the "flexicurity" approach include life-long learning enabling people to keep pace with the new skill needs; active labour market policies encouraging unemployed or inactive people to have a new chance in the labour market; and more flexible social security rules catering for the needs of those switching between jobs or temporarily leaving the labour market.

This **Green Paper**, therefore, examines the role labour law might play in advancing a “flexicurity” agenda in order to support a fairer, more responsive and more inclusive, labour market. As such, it seeks to:

- identify key challenges. Attention is given, in particular, to the scope of personal labour law rather than issues of collective labour law;

- engage the Member States, social partners and other relevant stakeholders, in an open debate on how labour law can promote flexibility as well as job security;

- examine how different types of contractual relations, together with employment rights applicable to all workers, could facilitate job creation and assist both workers and enterprises by easing labour market transitions, assist in life-long learning and foster workforce creativity;

- contribute to the Better Regulation agenda by promoting the modernisation of labour law. Particular consideration must be given to the challenges faced by SME’s in dealing with administrative costs imposed by both Community and national legislation.

An open consultation will be held over a four month period. Based on the responses received, the Commission will prepare a Communication in the course of 2007, which will be prepared within the context of a wider topic on flexicurity.