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

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The Committee on Employment and Social Affairs adopted, by a large majority, the report by Jacek **PROTASIEWICZ** (EPP-ED, PL) on modernising labour law to meet the challenges of the 21st century. It welcomed a new approach to labour law that aims to cover all workers regardless of their contractual situation and the discussions on the need to improve labour law to meet the challenges of the 21st century, in particular the need to reduce the insecurity sometimes associated with non-standard forms of employment, and to enhance the protection of vulnerable workers, in order to create more and better jobs and greater social cohesion, thereby helping to achieve the goals of the Lisbon Strategy. Improving labour law should be consistent with the principles of the Charter of Fundamental Rights, with particular reference to Title IV, and must respect and safeguard the values of the European social model and established social rights.

The committee considers that the priorities for labour law reform are: (i) extending protection to workers in atypical forms of employment; (ii) clarifying the situation of dependent employment and the grey areas between self-employment and employees with a dependent employment relationship; (iii) taking action against undeclared work; and (iv) facilitating the transition between various situations of employment and unemployment.

The report states that the European economy needs more people in employment in order to be able to compete globally and to fulfil the promises of social security. It considers that, if labour law is to meet the challenges of the 21st century, it must focus to a large extent on employment security throughout a worker's life rather than protecting particular jobs, making it easier both to enter and to stay in the labour market and to change from unemployment to employment and from one job to another through the use of active labour policies focused both on human capital development and on creating a supportive business climate as well as improving the quality of jobs.

The report considers that labour relations which characterise citizens' employment and professional activity have been subject to profound changes over the course of the last decade. It notes that the **permanent full-time contract** is the common form of the working relationship and as such should be seen as the reference for a coherent and consistent application of the principle of non-discrimination, therefore believes that European labour law should reinforce employment contracts of an indefinite duration as the general form of employment where adequate social and health protection is provided and respect for fundamental rights is ensured.

In this respect, the committee acknowledges the need for working time arrangements to be sufficiently flexible to meet the needs of employers and employees and to enable people to better balance work and family life as well as to safeguard competitiveness and improve the employment situation in Europe, without neglecting the health of employees. It strongly disagrees with the analytical framework presented in the Green Paper, which claims that the standard indefinite employment contract is outdated, increases labour market segmentation and the gap between 'insiders' and 'outsiders, and must therefore be regarded as an obstacle to employment growth and improved economic dynamism. It stresses that labour legislation is only efficient, fair and strong if it is implemented by all Member States, applied equally to all actors and controlled on a regular basis and in an efficient manner and requests that within the "Better legislation" initiative the Commission should strengthen its role as Guardian of the Treaty concerning the implementation of social and employment legislation. The Commission is criticized for interfering with Member State's right to control the application of Community law in the case of posting of workers.

It is noted that certain forms of non-standard contracts, depending on how well they are embedded in labour and social security law, as well as the provision of lifelong learning and training opportunities, can contribute both to improving the EU's economic competitiveness and also to for catering for different needs of workers, bearing in mind the stage of life they are at and their job prospects. At the same time, the committee recognises that non-standard forms of work must go hand in hand with support for workers who find themselves in situations of transition from one job to another, or from one employment status to another; also notes that in order to make this transition rapid and sustainable, it is necessary to focus on active intervention allowing workers who re-enter the labour market to be entitled to some level of income support during the period strictly necessary for them to become more employable through training and requalification. It is stressed that the Green Paper should focus on labour law itself.

Equality of treatment: the committee requests that all workers have access to the same level of protection and that certain groups are not excluded by default from the broadest level of protection, such as is currently often the case for seafarers, workers on vessels and offshore workers as well as workers in road transport; requests that efficient legislation should apply to all persons regardless of the place where they work.

Coherence in labour law: MEPs call for the creation of flexible and secure contractual arrangements in the context of modern work organisations. They believe that it is vital to increase SME's role in improving labour law. They consider that for more effective application of European law it is necessary to strengthen the industrial relations system and respond appropriately to the absence of employee representation in certain sectors, where most economic activity is undertaken by SMEs employing fewer than 10 people (this absence of representation being particularly pronounced in the new Member States). Due to labour market segmentation, where job security is low and employment is more unstable, in many of non standard contracts there is little access to education and training, occupational pensions and professional development provided, and in general underinvestment in human capital.

They stress the importance of arriving at a degree of consistency in the field of labour law, which may be achieved though directives and collective agreements and the open method of coordination and urge the Commission to take account of the vast differences that exist between national labour markets and the Member States' competency in this area, but reminds of the goal to create a competitive, innovative and inclusive Europe and more and better jobs. The Commission is called to coordinate between national labour law and social inspectorates. They consider that the rights of cross-border workers could be adequately protected under the relevant legislation if it were effectively implemented and that the aim of adopting a **single definition of a worker and a self-employed person** under Community law is extremely complex because of the very different social and economic realities and traditions in the individual Member States. At the same time, there needs to be an initiative aimed at raising a certain level of convergence necessary to guarantee that the implementation of the Community acquis is coherent and more efficient; this convergence should respect the rights of the Member States to determine the existence of an employment relationship.

The Commission is called upon to initiate negotiations with the Member States as a matter of urgency, with the aim of establishing transparent and consistent criteria for determining the status of "workers" and "self-employed persons" in employment law and the Parliaments position that any definition of a worker should be based on the de facto situation at the place and time of work is restated.

Flexicurity: MEPs strongly condemn the abusive replacement of regular employment with new forms of employment without any imperative economic necessity, which is commonly resorted to in European media undertakings in particular, with the aim of maximising short-term profits to a far greater than normal extent, at the expense of the general public, employees and competitors. They stress that such action violates the European social model, as it lastingly destroys the consensus, fairness and trust between employers and employees. Member States and the two sides of industry are urged to take action in this regard in order to halt irresponsible abuses.

Flexicurity can only be achieved by effective and modern labour law that reflects the changing realities of work. MEPs note that collective bargaining and strong social partners are an important part of the flexicurity approach and believes however that there are various models of flexicurity. They also note that a common approach should be based on combining firms and workers ability to adapt with a sufficient level of social protection, social security and unemployment benefits, active labour market policies and training lifelong learning opportunities. It considers that broad welfare provisions and universal access to services such as childcare and other dependents contribute positively to these aims.

They believe that the definition of flexicurity in the Commission's Green Paper is too narrow.

Member States and the Commission are called upon to strengthen rights for parental leave and childcare provisions at both national and European level for both men and women. They welcome the strategy outlined to fight against undeclared work and the underground economy, which - although present to a varying extent in the different Member States - damages the economy, leaves workers unprotected, is detrimental to consumers, reduces tax revenues and leads to unfair competition between firms. An information campaign should be launched directed at employers and workers aimed at drawing attention to the applicable EU minimum rules and regulations and adverse effects clandestine work can have on national social security systems, public finances, fair competition, economic performance and on workers themselves.

The committee calls on the Commission to regulate joint and several liability for general or principal undertakings, in order to deal with abuses in the subcontracting and outsourcing of workers and to set up a transparent and competitive market for all companies on the basis of a level playing field regarding respect for labour standards and working conditions, in particular calls on the Commission and the Member States to clearly establish at European level who is responsible for compliance with labour law and for paying the associated wages, social security contributions and taxes in a chain of subcontractors.

Lastly, the Commission is called upon to facilitate the establishment of a dispute settlement system, to

enable the European agreements between social partners to develop into an effective and flexible tool that can foster a more effective regulatory approach at European level.