



Bureau contribution to the Green Paper
“Modernising labour law to meet the challenges of
the 21st century”

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Executive summary

In the last decades, young people were deeply affected by the increasing segmentation of the labour market and the parallel development of new atypical forms of employment. Young people with fewer opportunities, which are often the least qualified, face particular challenges that deserve specific responses from policy makers.

A Fundamental Rights approach to labour law is needed in order to offer all employees the same rights in the labour market. Improving the labour market integration of young people shall be conceived as a collective responsibility, which requires the equal involvement of actors such as public authorities, the social partners and youth organizations, including students' organisations. At the national level, the role of the National Youth Councils¹ is crucial notably in view of the European Youth Pact's implementation.

Decent working conditions; fair wages; the reconciliation of professional, private and family life; high quality education and life long learning; social dialogue and partnership at the managerial and collective levels; as well as the protection against all kinds of discrimination must all be central elements of a modern labour law that ensures social security and fundamental rights to all employment contractual agreements,

Introduction

Independently established by youth organisations, the European Youth Forum is made up of more than 90 National Youth Councils and International Non-Governmental Youth Organisations, which are federations of youth organisations in themselves. It brings together tens of millions of young people from all over Europe, organised in order to represent their common interests.

The European Youth Forum welcomes the European Commission Green Paper consultation on labour law. This Green Paper consultation will however not suffice to achieve a consensus on a common European approach to flexicurity. The Commission therefore needs to make sure that a structured public debate on flexicurity is pursued after the publication of the communication on "pathways towards more flexicurity". To that end, the European Commission would usefully set up specific dialogue mechanisms adapted to the civil society, in order to hear and consider the views of civil society organisations.

Instead of answering all questions included in the Green Paper, the European Youth Forum is willing to present here its priorities for a labour law reform agenda as well as a first position on the concept of flexicurity.

¹ The National Youth Councils are the national co-ordinating bodies of non-governmental youth organisations. Open to all, the National Youth Councils include most of the main democratic youth movements and organisations on the national level in that State.

This Youth Forum contribution to the Green Paper on labour law builds upon previous Youth Forum policy work on employment issues.ⁱ

Lastly, the Green Paper comes in a context where the European Commission envisages the publication of a communication on youth employment by the end of 2007. In this view, the European Youth Forum urges the Commission to develop its policy work on youth employment and on flexicurity in a coherent manner and in full consideration of the European Youth Pact's main aims and objectives.

Background context

Labour law is a key issue for many organizations and it affects the lives of all European citizens. Conceived to safeguard equal working conditions to all employees, the rapid development of new atypical forms of employment² is threatening the unity of employees' rights. Condemning this downward trend, the European Youth Forum strongly believes that all the people active in the labour market, including the unemployed, need to be offered the same rights and legal protection. A fundamental rights approach to labour law is needed.

When the Green Paper states that "the original purpose of labour law was to offset the inherent economic and social inequality within the employment relationship" it seems to suggest that this is not any longer a valid role for labour law. The European Youth Forum on the contrary believes that this still needs to be considered as an important role for labour law, which is especially relevant for young people and even more for the low skilled work force. There is indeed a growing imbalance between the employer and the young person entering the labour market, who is in most cases confronted with temporary employment or other precarious work conditions.

Instead of adapting this original purpose of labour law to the needs of Europe today the Green Paper seems to rather focus on thinning down the role of legislation to provide more freedom to the employers, but without an adequate consideration of the needs of all the people active in the labour market. The claim to create better jobs is hardly addressed in the Green Paper although it is an important pillar of a modern labour legislation. The European Youth Forum therefore asks for the full consideration of the Stockholm European Council conclusions that were adopted in March 2001 and urges for its recognition in the flexicurity debate³. This is all the more important as the promotion of social cohesion is one of the Lisbon strategy's main objectives, although this is not very well reflected in the Green Paper.

² Atypical forms of employment include but are not limited to fixed-term contracts, part-time work, on call and zero-hour contracts, hiring through temporary employment agencies and freelance contracts.

³ See in the Stockholm European Council conclusions: "Regaining full employment not only involves focusing on more jobs, but also on better jobs. Increased efforts should be made to promote a good working environment for all including equal opportunities for the disabled, gender equality, good and flexible work organisation permitting better reconciliation of working and personal life, lifelong learning, health and safety at work, employee involvement and diversity in working life."

In a global economy that already divides employees between “winners” and “losers”, the fast adoption of reforms without prior social consensus did not help balance the devastating effects that economic globalization has on the less qualified employees, but on the contrary put them in a more vulnerable situation. The development of precarious jobs undermined national solidarity and social cohesion as well as it cut the link between employment participation and social inclusion, notably through increasing numbers of “working poors”.

I. Labour law and youth - Recent trends

Part of this broader picture, young people are a strong example of the inadequacy of the reforms. Although there is a big diversity of national situations in Europe, the transitions between education and employment have become a dangerous period of life, for which policy makers never really decided to commit to find solutions.

Through higher participation rates in universities, European countries achieved much higher levels of education for a majority of young people. The constant increase in the qualifications obtained however did not help young people entering the labour market at their level of qualifications, and over-qualification has become a generally accepted waste of talents.

At the other side of the spectrum, a significant proportion of young people are left behind with very low levels of educational attainments, and their entry into the labour market is no longer possible, which explains the continuously very high levels of youth unemployment.

High youth unemployment rates have characterized European labour markets for the last twenty years. Instead of addressing the structural grounds of youth unemployment, policy makers preferred actions whose effect has been to trap young people in precarious jobs.

Thus the European Youth Forum firmly condemns the development of atypical forms of employment as the way to improve youth employment levels. The fact that national governments have tended to develop new legislations, in derogation to traditional labour laws, which target youth specifically is indeed an important concern for the European Youth Forum. The European Youth Forum urges the Commission to review current youth employment national legislations and check their compatibility with the employment equality directive 2000/78, which forbade age discrimination in the labour market.

The European Youth Forum also fears that such derogative laws are possible because young people are in fact not well represented in the labour laws' development process.

As they play a substantial role in shaping labour laws, either directly or indirectly, employers and trade unions should be held jointly responsibility to facilitate young people's entry into the labour market.

But besides the role of the traditional social partners, the role of other civil society organizations such as youth organizations including students' unions need to be recognized in all labour law development affecting youth. Indeed, trade unions' main responsibility is to raise the voice of employees in labour law discussions. While a majority of European youth is today participating in higher education systems, the number of young employees related to the total number of young people living in Europe has become lower and lower, especially when considering the minority of young employees who are enjoying permanent employment contracts. Consequently young people are less and less represented through trade unions who invest most of their efforts in representing employees with traditional employment contracts and therefore often do not speak on behalf of the unemployed or precariously employed. Because youth has become a group of "outsiders" in the labour market, the trade unions cannot anymore be considered as their only representative in labour law discussions affecting youth.

The European Youth Forum strongly believes that the role of youth organizations including students' organizations need to be further developed in order to ensure a genuine social dialogue on youth employment issues. At the national level, national governments should enter in a structured dialogue with the National Youth Councils in view of the European Youth Pact's implementation, which includes the development and monitoring of all labour laws affecting youth⁴.

II. Labour law reforms should urgently respond to long-standing challenges facing youth in the labour market

A. Youth access to work

For both low qualified and qualified youth, access to employment is a critical period of time, as the labour market is strongly reluctant to hire young people lacking professional experience.

Before entering the university, young people need to be fully aware of the professional opportunities offered by different types of educational careers. Orientation tools and a better interaction between education providers and the world of work are needed to make sure that young people are making an informed choice when choosing their studies' specialization. Trade unions should play a specific role in sharing with young people information related to labour market integration. In addition, while youth organisations have to be recognized as important stakeholders in youth employment issues, they would also make a valuable contribution to the development of effective orientation mechanisms.

National educational and training systems are greatly linked to national circumstances, which explain that their levels and methods varies a lot

⁴ See the European Youth Forum statement to the Spring Summit 2007 (0150-07), February 2007

across the member states. More good practice exchanges are needed at the European level so as to optimize the contribution that education and training systems can make to young people's integration into employment. Education and training systems can only deliver outcomes if a series of actors are involved in their functioning. Youth integration in the labour market shall therefore be conceived as a collective responsibility.

At the national level, the European Youth Forum strongly believes that employers, trade unions, and the National Youth Councils should be equally involved in a genuine dialogue regarding youth integration in the labour market. Only such dialogue can help developing better links between education and work, which are a prerequisite for the better integration of youth in the labour market. More particularly, youth organisations have a lot to contribute in view of the recognition of the skills acquired through Non-Formal Education in the labour market⁵.

The rapid numerical increase of internships in Europe was linked to the need to combine education and work. The Youth Forum acknowledges that when they are part of education curricula, internships are a positive tool to facilitate young people's access to employment. But the learning dimension of internships has been reducing rapidly with a majority of interns working on issues that will not allow them to progress in their professional development. Additionally, in the degraded economic context that Europe has experienced in the last decades, the reality has been that employers are more and more recruiting graduates as interns without offering them any labour law protection and often without any or very limited financial compensation. Their motivation is in fact lacking any educational dimension and it is regrettably often limited to the willingness to reduce their staff costs.

Because no data is yet available on the reality of the internship phenomenon, the European Youth Forum urges the Commission to collect data on the different types of internships offered to young people and the working conditions that interns face. Only with such knowledge can the European Union start discussing, in the framework of the European Employment Strategy, ways to satisfactorily develop new labour laws, which organize a legal framework for internships and offer adequate levels of security to interns.

B. A life-cycle approach to work

The development of atypical forms of employment has been the main cause for the labour market segmentation. Today in Europe only a minority of young people enter the labour market in permanent work contracts and the large majority of youth is experiencing diverse atypical forms of employment before finding a permanent job.

⁵ [See the Policy Paper on "the recognition of non-formal education: Confirming the real competencies of young people in the knowledge society" \(0716-05\), November 2005.](#)

In addition of being the victims of increasingly segmented labour markets, younger people are experiencing longer transitions from insecure to stable jobs. It is true that atypical forms of employment can be a stepping stone for labour market integration, but a majority of young people have to wait several years in internships and under fixed term contracts and other non-traditional contracts before getting a decent employment. In addition, it is proven that young people with fewer opportunities, who are more likely to leave educational systems without qualifications, are often blocked into precarious forms of employment and are denied any upward mobility over their working lives.

The Green Paper argues that “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. Such jobs may however serve as a stepping-stone enabling people, often those with particular difficulties, to enter the workforce.” Whilst the first part of this analysis is correctly pointing out to the consequences of precarious work, the second part is referring to a very small number of people who do indeed benefit from the flexibility of a precarious work situation. The majority of young people entering the labour market on the margin just prolong their transition from childhood and dependence on the family to adulthood. This continuous lack of autonomy prevents them from making plans or investments in their own life such as family planning. The Green Paper is nevertheless correctly pointing out that younger people with non-standard contracts have fewer chances to leave this vicious circle.

Supportive policy measures facilitating youth entry in the labour market are highly needed to eventually ease the transitions between education and work. Tailor made support for entering the labour market, as developed through the UK “new deal”, as well as individual job planning with educational opportunities as it happens in Denmark should be granted to all young Europeans.

In addition, ambitious targeted policies are needed for young people with fewer opportunities. In the short term, it is urgent to develop specific pathways to employment for the school drop-outs who are not in education or in employment. In the longer term, a strategic preventative policy approach is needed from the earliest stage in life to make sure that that education does not leave any child behind. In the long run, early intervention will cost much less than reparation policies aiming to bring people back in society.

The complexity and diversity of employment contracts offered in the European segmented labour markets call for the development of guidance and legal counselling systems, which are accessible for everyone. Young people and people with lower qualifications have otherwise no chance for enforcing their rights. This has to be combined with easily accessible, optimised and standardised contract forms with text modules to facilitate contractual work arrangements for the employer and employee.

The European Youth Forum strongly believes that a strategic labour law reform should aim at offering the same levels of protection to all employment contracts. A diversity of contracts may be needed to respond to the needs of the economy and to adapt to the labour force needs. Social dialogue mechanisms should aim to balance the needs of the economy while promoting a free choice for job seekers and employees.

A Fundamental Rights approach to labour law is needed in order to make sure that all employees are offered the same rights and protection. Civil society organizations and the social partners should be involved on an equal footing to find an agreement on the rights that should be conferred to all those active in the employment market. The Youth Forum strongly believes that anti-discrimination rights, health and safety protection, guarantees of minimum wage as well as safeguards for collective bargaining rights, have to be extended to economically dependent workers.

Labour law's main aim shall be to combat labour market segmentation instead of promoting it as was the case until today. An integrated approach to labour law is needed and, to that end, flexicurity discussions can be very helpful.

III. For a holistic approach to labour law reform - Agreeing on the right balance between flexibility and security

The flexicurity debate should first and foremost lead to the creation of an EU wide "employee" concept based on fundamental rights and a common legal definition including minimum standards of employment protection. Especially for young people it is indispensable to agree on minimum standards for temporary work, clear regulations for on call time as well as cross-border occupation.

An obvious blind spot of the analysis conveyed in the Green Paper is the Commission's only focus on the positive and job creating effects of atypical jobs. Such approach forgets to mention that many of those atypical jobs were not created for altruistic reasons but rather to provide employers with disproportional fiscal advantages, also enabling them to bypass existing labour law protection standards. If the creation of more and better jobs is taken seriously, we cannot aim to bring standard employment closer to atypical work but we should on the contrary guarantee the same protection standards for all contractual arrangements.

At the macro level, flexicurity discussions aim to combine economic competitiveness with adequate levels of social protection for employees in Europe. At the micro level, a flexicurity system should allow enterprises to hire and fire more easily while securing employees' situation in and outside the labour market through the combination of generous social protection systems and active labour market policies. Moving from a job protection to an employment protection system has strong consequences on the role of labour law, which was until now the main instrument to protect employees from the risk of unemployment.

Flexicurity is a balanced model of flexibility and security. However, before going forward with any flexicurity system, all parties concerned, including on an equal footing the social partners and civil society organizations, should agree on what flexicurity will mean in practice, and how this concept could have EU wide standards. For instance, the development of effective Life Long Learning mechanisms, which would require the adoption of new labour laws, the development of adequate minimum income schemes, and the right combination between active labour market policies and training systems are crucial to ensure that Europeans can indeed experience upward mobility over the course of their working lives.

One of the main worries of Europeans would be that flexicurity means in practice flexibility for enterprises, without more security and flexibility for employees. The Green Paper so far only outlines the benefits of flexibility for the economy instead of also addressing the benefits that employees' security bring to the economy. This imbalance has to be corrected in future documents. More particularly, dismissal protection is often portrayed as the main obstacle to employment creation. But positive aspects of dismissal protection such as higher motivation, loyalty to the employer, more investments in in-job training as well as health protection, the lowering of transaction costs for job recruitments and the greater likelihood of general investments are not even mentioned. The increased amount of stress borne by the people whose employment relationships was badly terminated and the fact that stress is an open door to health problems should also be taken into account.

To also achieve more flexibility for employees, the development of effective reconciliation policies and a life-cycle approach to work are indispensable prerequisites. The right to part time work and the right of all employees to influence their contractual agreement need to be developed.

Having debates on flexicurity without a clear financial and political commitment to improve care systems, especially childcare and nursing care facilities, but also care services for older people, are irresponsible.

The access to life long learning schemes should be facilitated through developing a European Qualifications framework and national Qualifications frameworks that also recognise the competencies acquired through non-formal education.

In line with the life-cycle approach to work currently promoted at the European level, other important measures for young people include the creation of attractive models for sabbatical periods and a right to further education, for instance through guaranteeing a right to 40 hours of education every year. And all educational measures in the labour market must be equality-proof so as to make sure that the offer for educational opportunities is equally accessible to low qualified workers, workers in precarious jobs and more generally to women, young people, older people, migrants and disabled people.

To achieve more security, Europeans need to be reassured that their Member States are ready to assume the responsibility of conferring adequate social protection levels to all the people present in the labour market. Because a flexicurity system would indeed have as a first consequence to shift the duty to protect all people present in the labour market from the employers to national authorities. Under current models, labour laws are holding employers responsible for the protection of employees, notably through strict layoff conditions.

Aware of this shift of responsibility, which is implied in the flexicurity approach to work, the European Youth Forum urges national public authorities and policy makers to offer guarantees on how they plan to finance a well-functioning flexicurity model. When the Commission will have officialised its communication on “pathways to flexicurity”, all European Union Member States willing to transpose a flexicurity model in their national circumstances should come up with a budget, including the costs that such system would raise for the state.

Because flexicurity touches at issues, which are crucial to citizens, national debates should be organized before implementing any flexicurity system. Such debates should involve not only the social partners but also the civil society at large and enough time should be foreseen to reach a compromise acceptable to all. In these debates, it is essential to promote a holistic approach to flexicurity reforms, which will notably imply a thorough revision of labour laws, as it will be very hard if not impossible to implement a flexicurity approach only partially.

In order to facilitate the transposition of flexicurity in different national contexts, the Commission would usefully closely follow and assist the development of national flexicurity models.

If national flexicurity models are well-designed and are based on a national consensus, then there are good chances that such systems have sustainable positive effects on the labour market. And if flexicurity manages to contribute to full employment and economic competitiveness, then the European Union would have justified to all its people the importance to deal with social issues at the European level, which is an important element to build tomorrow a Europe of citizens.

IV. Labour law: A national competence with a strong European dimension

In the current division of powers between the European Union and its Member States, labour laws are an area where subsidiarity is fully at play. And there are good reasons for that as the European Union can hardly embrace the broad diversity of situations present in the 27 member states of the European Union.

Nevertheless, as the European Union goes beyond an economic alliance and aims to be a community of values belonging to its citizens, promoting

solidarity between the Member States would call for the development of basic social rules, which ensure that all Member States acknowledge that they belong to the same community of values. As indicated earlier, labour laws' protection needs to be founded in fundamental rights, which reflect the European Union's values.

Without legislation and its enforcement, social dumping is growing in the European Union. In some European countries, aggressive fiscal policies and lower social protection are used as economic comparative advantages, although it is to the detriment of their populations. The European Union has a role to play to develop legislation making such practices unlawful.

The European Youth Forum strongly encourages the German Presidency to continue steering the work of the Council towards a more social Europe. It is highly needed as testifies the long time since when the directive on temporary agency work⁶ and the working time directive⁷ have been blocked in the Council.

V. Closer monitoring mechanisms and a partnership approach are needed for an effective implementation of labour law

As evidenced earlier in the paper, new labour laws are needed on a series of domains such as youth employment, Life Long Learning and reconciliation policies. In addition, the flexicurity discussions could usefully lead to the emergence of a new holistic approach to labour law.

Once the laws are adopted, it is essential that closer monitoring mechanisms are developed to transpose legislation into the lives of the people. It is therefore unacceptable that existing European Union labour legislation remains badly implemented, enforced and monitored.

For instance, enacted in 1957, the principle of equal pay between genders is still very far from being observed in practice. 50 years later, the gender pay gap indeed still amounts to 15%. This is unacceptable as this undermines the peoples' trust in legislation, which is however the expression of the peoples' sovereignty. Even in countries where the participation rates of women in the labor market is high women are often trapped in low paid sectors as well as precarious work conditions or part-time work, with little opportunity for career development. More efforts are needed to make sure that legislation matters.

In some cases as this is often the case for gender equality legislation, implementation does not happen because of cultural resistance. For this reason, social partners and the civil society at large should be highly involved in the monitoring process. Making the link between the people and

⁶ Proposal for a Directive of the European Parliament and the Council on working conditions for temporary workers 27 August 2002, COM/2002/0149/EC

⁷ Proposal for a directive of the European Parliament and of the Council concerning certain aspects of the organisation of working time, 4 November 2003, COM/2003/88/EC

policy makers, civil society actors have an important role to play in implementing legislation.

Conclusion

Through launching this Green Paper consultation, the European Commission has opened a very important debate, whose outcomes need to influence the future of the European Union policies on employment and social issues. This Green Paper consultation will nevertheless not suffice to find a consensus on a common approach to flexicurity. The Youth Forum therefore urges the European Commission and the European Member States to set up adequate dialogue mechanisms, enabling the participation of the civil society at large in the “flexicurity” discussions.

If the creation of more and better jobs is taken seriously, we cannot aim to bring standard employment closer to atypical work but we should on the contrary guarantee the same protection standards for all contractual arrangements. The role of labour laws, which has for long been crucial for protecting employees, could be re-assessed in view of the flexicurity discussions, which could lead to shift the duty to protect the people active in the labour market from employers to public authorities. This potential shift should in any case not end labour law’s mission to offset the inherent economic and social inequality between the employer and the employee within the employment relationship.

Part of the broader picture, young people are facing very high challenges to find and keep a stable employment. New labour laws are needed to respond to their specific situation and needs and young people’s integration in the labour market should now be conceived as a collective responsibility. Specific policies are also needed to respond to the needs of young people with fewer opportunities and low-qualified young people, whose entry into the labour market is hardly possible under the current circumstances. And the Commission should start a research to collect data on the realities faced by interns in Europe. Lastly, the social partners and youth organizations have a central role to play in order to find ways to improve education and training systems and to facilitate young people’s entry into the world of work.

ⁱ [Policy Paper on youth autonomy \(0052-04\)](#), April 2004; [position paper on the European Youth Pact \(0280-05\)](#), April 2005; [Position Paper on the Green Paper on demographic change \(0406-05\)](#), September 2005; [position paper on the European Communication on European policies concerning youth \(0576-05\)](#), September 2005; [position paper on the Commission consultation on active inclusion \(0330-06\)](#), April 2006; [policy paper on social inclusion through youth participation \(0070-06\)](#), April 2006; [policy paper on equality and diversity \(0183-06\)](#), April 2006; [contribution to the BEPA report “investing in youth: from childhood to adulthood” \(0885-06\)](#), November 2006; [contribution to the “European Commission first stage consultation on reconciliation of professional, private and family life” \(0971-06\)](#), December 2006