

GREEN PAPER OF THE EUROPEAN COMMISSION
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“Modernising labour law to meet the challenges of the 21st century”

“By his work and industriousness, man – who has a share in the divine art and wisdom – makes creation, the cosmos already ordered by the Father, more beautiful. He summons the social and community energies that increase the common good, above all to the benefit of those who are neediest”¹.

The capital importance of human work is at the heart of the Catholic Social Teaching, which is the basis for the activity of Caritas organisations. **Human work is central to the whole social question and necessary not only for economic growth, but also for the cultural and moral development of every person, of the family and the society.** Throughout their action as major providers of social services and as political interlocutors, Caritas organisations are committed to defend and promote the dignity and rights of workers, which are connected to the protection of the right to property, to the principle of social cooperation, to the defence of the rights of the weak and the poor, to the obligations of workers and employers.

As the umbrella organisation of the 48 national Caritas organisation in Europe, Caritas Europa welcomes the Commission’s initiative to launch a consultation on modernizing Labour Law. Employment is one of the pillars of the European social models and a major concern of European citizens. In the current political discourse, employment is also considered as the major instrument to combat social exclusion.

Though this assumption can prove true in many cases, it cannot, however, be applicable to everyone. Many people in Europe still experience circumstances (such as permanent mental or physical disability, lack of sufficient education or working skills, chronic disease or old age) which do not allow them to work. In spite of all political efforts undertaken to improve this social picture, there will always be people who cannot be part of the “productive” society. In many cases, having endured too severe trials in their life, these people will never be able to join the labour market. And yet, not only have they the right to a dignified life, to moral support and consideration, but they can also contribute to society otherwise than by work. It is indeed important to underline that, from an anthropological point of view, the human being does not only find fulfilment through work, but also through his social relationships.

As a preliminary remark - before entering the technicalities of this Green Paper - Caritas Europa therefore reminds the EU Institutions and the national Governments that **a necessary and sufficient social protection** must be provided to this category of people, in addition to any intervention aimed at modernising Labour Law.

A reform of Labour Law should start by recognising that:

¹ Pontifical Council for Justice and Peace, “Compendium of the Social Doctrine of the Church”, Chapter VI, para. 266, p. 155.

- 1) **Employment under decent working conditions is a fundamental right.** However necessary, work must help every human being to express and enhance his or her dignity. Whatever its content may be, work must be oriented to the self-realisation of every worker, which can only be allowed by the full enjoyment of his or her rights.
- 2) Conceived as a principal channel to allow every worker to unfold the potential he or she has built up (through education, training, vocational training and life-long learning), **employment must be kept away from behaviourist or utilitarian approaches** privileging a narrow vision of self-realisation in terms of material benefits or incentives.

Such starting points make it possible to reconcile the need for increased efficiency with a rights-based approach. Unemployment can in fact be considered as both a waste of human resources and as a breach of fundamental rights.

Bearing in mind these considerations, Caritas Europa is happy to take part in the consultation launched by the Commission and offer the following suggestions.

1. What would you consider to be the priorities for a meaningful labour law reform agenda?

A meaningful Labour Law reform should aim, first and foremost, at **achieving a balance between modernising interventions and the protection and security of workers.** Reforms cannot be operated to the detriment of the security of workers, whose needs are more the certainty of having a job rather than keeping the same job forever. Solutions must then be found so as to foster more flexibility without leading workers into instability and uncertainty.

Reforming Labour Law is a complex operation involving various aspects:

- As to the methods, Caritas Europa considers **social dialogue should be given a key role** in this action, while also involving other stakeholders than the traditional social partners only ; this is true at European and at national level;
- **Employment is currently the main contributor to social protection:** because of the volatility of other production factors, we consider that labour bears an excessive share of the burden. This may account for a large share of unemployment and undeclared work. Therefore, a priority would be to **find alternative ways for financing collective functions,** including taxation of other production factors. Member States should be encouraged to increase the diversity of the sources of financial contribution to social protection through other forms of taxation (ex. VAT).
- Content-wise, since labour law is mainly of Member States' competence, the role of the European Union should concentrate on coordinating national initiatives and exchanging experiences. Still, issues like the working time directive are of major importance for social and health services where 7/24 working schedules are frequent.

Finally, the impact of labour reforms on the most excluded groups must also be regularly assessed, even though social inclusion may not be the primary purpose of those reforms. In many respects, effectiveness and inclusiveness do not contradict each other.

2. Can the adaptation of labour law and collective agreements contribute to improved flexibility and employment security and a reduction in labour market segmentation? If yes, then how?

The answer is positive, provided flexibility **and** security are guaranteed. Labour market segmentation may also result from inappropriate legislative action, especially when measures

are adopted without coherence. This may be worsened by insufficient coordination across policy levels.

We suggest a twofold kind of intervention:

- a) Before the economic situation of businesses is irreversibly compromised, the possibility of **training, support, orientation and advice** should be offered in a timely fashion by the employers in order to avoid as much as possible forced dismissals. Such a responsibility would mainly rest on the employers, with possible support from the State (advice, financial aid, tax relief).
- b) When forced dismissals take place, everything must be done to **prevent psychological distress** (which very often leads to **social exclusion**) and to reintegrate workers as soon as possible into the labour market, by recognising and implementing a **right to training** during unemployment, by offering performing **services of guidance and orientation** and especially by creating sufficient alternative employment possibilities. This kind of intervention would especially involve the State's responsibility, as well as the social partners.

To summarise, we could affirm that the adaptation of Labour Law and collective agreements should pursue the following objectives:

- **facilitating participation in the labour market;**
- **strong social protection and social insurance schemes;**
- **access to high-quality support services in case of forced dismissal.**

4. How might recruitment under permanent and temporary contracts be facilitated, whether by law or collective agreement, so as to allow for more flexibility within the framework of these contracts while ensuring adequate standards of employment security and social protection at the same time?

This question is at the heart of the flexicurity debate. In our view, there should not be a single European response to the need of allowing more flexibility while ensuring employment security and social protection. In this sensitive matter, **the Member States should have the responsibility to find each one its own balance**, to the extent made possible according to their legal orders. A reform of labour law in this respect cannot, in fact, be made without regard for the existing legal and institutional arrangements at national level.

On the other hand, we would like to underline that **flexibility and security should not be seen as incompatible with one another**. The experience of some "high performers" such as the Nordic States shows in fact that the link between economic performance and social protection is not to be viewed as a one-way relationship. Economic performance has been for too long considered as the primary factor which would generate the necessary social protection. Yet, the practice assessed in many countries around the world has shown that such an economy-oriented approach is insufficient. The success of the Scandinavian countries lies as much in the design of their social system as in the amount of their social expenditures. This is a case for emphasizing the "cost of non-social policies".

5. Would it be useful to consider a combination of more flexible employment protection legislation and well-designed assistance to the unemployed, both in the form of income compensation (i.e. passive labour market policies) and active labour market policies?

If the reduction of income resulting from the full or partial loss of a job is duly compensated by unemployment benefits respectful of the living standards of each person and if, on the other hand, such unemployment periods are kept to a minimum extent, a more flexible employment system would indeed correspond to the needs of modern economy. Active employment

measures should guarantee an effective and performing service so as to limit to a minimum the periods spent outside work. Such a service would include advice, orientation, guidance, training and reintegration. However, this should not legitimate a decrease in the compensatory benefits recognised to unemployed.

As explained by Prof. Ides Nicaise during the 28th March 2007 Thematic Review Seminar on “Modernising and activating benefit and social protection systems to promote employment”², such policies may deliver if carefully designed in order to take into account **not only the unemployed, but also people who are not yet, not anymore or not at all on the labour market.**

6. What role might law and/or collective agreements negotiated between the social partners play in promoting access to training and transitions between different contractual forms for upward mobility over the course of a fully active working life?

Participation in training courses should be given effect by greater security of employment through **enhanced possibilities of upgrading and promotion**. The major role in this respect rests on the **law**, as it concerns global economy.

From its part, **social dialogue** can be a powerful tool for adapting labour markets to changing needs, situations and social risks, provided it is open to representatives of all sectors, especially social (economy) enterprises which are active in the field of social and health service provision. This is one of the sectors with the biggest potential for job creation and innovation.

8. Is there a need for a “floor of rights” dealing with the working conditions of all workers regardless of the form of their work contract? What, in your view, would be the impact of such minimum requirements on job creation as well as on the protection of workers?

A “floor of rights” is desirable for all workers who are in a more vulnerable position than long-term employed or self-employed. We think namely of the countless workers employed under “interim” arrangements, part-time arrangements or under fixed-term contracts. Ensuring to these workers a hard core of guarantees, preferably set by law, would definitely correspond to the ultimate aim of protecting their fundamental rights and dignity. Reinforcing the guarantees offered by such work arrangements would also encourage many more people in search of job opportunities to accept this kind of positions. This would consequently foster job creation.

In particular, a “floor of rights” would also make things easier for the so-called “independent workers” who are in practice economically dependent from a single employer, as rightly pointed out by the Green Paper. Such set of guarantees would facilitate the creation of this kind of positions - otherwise rather negatively perceived – without fears of ending in instability.

As to the contents of this “floor of rights”, Caritas Europa considers that decent working conditions mean **employment stability, health safety, non-harassment, a just salary, the right to rest, participation in and control over management and profits**. In our view, this goes well beyond the “minimum of resources” advocated for during the Spring Summit. Enhanced coordination among Member States and regular monitoring should be ensured in order to avoid any “race to the bottom” between different standards.

10. Is there a need to clarify the employment status of temporary agency workers?

Yes.

11. How could minimum requirements concerning the organization of working time be

² «Unemployment and non-employment: toward an integrated approach».

modified in order to provide greater flexibility for both employers and employees, while ensuring a high standard of protection of workers' health and safety? What aspects of the organization of working time should be tackled as a matter of priority by the Community?

In many respects, there is no major contradiction between flexibility and security when it comes to working time, nor is there a major contradiction between the social partners' point of view. The obstacles appear to lie rather between different national conceptions of what is expected from employment regulations. In our view, minimal standards should be enforced at European level in this respect.

12. How can the employment rights of workers operating in a transnational context, including in particular frontier workers, be assured throughout the Community? Do you see a need for more convergent definitions of 'worker' in EU Directives in the interests of ensuring that these workers can exercise their employment rights, regardless of the Member State where they work? Or do you believe that Member States should retain their discretion in this matter?

A common set of rights, which would be based on a commonly agreed definition of "worker", should exist at EU level to make the circulation of workers easier. It is useful in this context to recall the notion of a "floor of rights", discussed under question n. 8.

13. Do you think it is necessary to reinforce administrative co-operation between the relevant authorities to boost their effectiveness in enforcing Community labour law? Do you see a role for social partners in such cooperation?

Administrative cooperation is compulsory in a situation where coordination is indispensable. Social partners should indeed be involved in the design and implementation of such a process.

14. Do you consider that further initiatives are needed at an EU level to support action by the Member States to combat undeclared work?

Undeclared work, especially related to immigration, is spread all over EU Member States. The experience of several Caritas organisations testifies of unfair treatment towards thousands of migrants (be they regular or irregular) hired in the informal economy. They hardly have a chance to improve their working conditions, to bring a complaint against their employers, or to have access to legal assistance and exhaustive legal information. Neither have they the possibility to accede trade unions. The undeclared jobs which are offered to them entail no social security and usually lower wages than the minimum established by national provisions. It is worth reminding that undeclared work is often related to the difficulties encountered by immigrants in the procedures to apply for asylum and obtain refugee status.

We therefore think that the EU should adopt further measures to counter this Europe-wide phenomenon. To this purpose, the European Commission could undertake a study on the current situation of informal economy in the Member States, in particular by carrying out a survey in national legislations to assess the risk of social dumping under the existing employment regulations.

To the extent that undeclared work is connected to trafficking in human beings, the fight against this phenomenon should take place under the instruments already adopted at EU level (and by the Council of Europe) and especially through judicial cooperation among Member States. In this context, immigrants should have access to information on the extent of their rights and on legal remedies available.

Combating undeclared work not related to exploitation should vice-versa appear among the common priorities of the Integrated Employment Guidelines under the European Employment Strategy. Member States should be encouraged to adopt positive incentives to prevent recourse to undeclared work, rather than more severe sanctions on employers, which would further hinder the integration of migrants into the labour market of the host State, therefore hampering their social inclusion.

Brussels, 16 April 2007.

Created in 1971, Caritas Europa is one of the seven regions of Caritas Internationalis, the worldwide confederation of 162 Catholic relief, development and social service organisations working to build a better world, especially for the poor and oppressed, in over 200 countries and territories. Caritas Europa is the umbrella organisation of the European network of 48 Caritas member organisations, working in 44 European countries. Caritas Europa focuses its activities on policy issues related to poverty and social inequality, migration and asylum within all countries of Europe and issues of emergency humanitarian assistance, international development and peace throughout the world. With regard to all these issues, the organisation develops policies for political advocacy and lobbying at European level as well as at national level. The organisation is strongly involved in supporting the activities of its member organisations and those in the wider Caritas Internationalis confederation.