



**NORDENS FACKLIGA SAMORGANISATION  
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COUNCIL OF NORDIC TRADE UNIONS**

**Comments to the ETUC  
from the Council of Nordic Trade Unions – NFS  
on the Commission’s Green Paper on Labour Law**

*LB 070115*

**MODERNISING LABOUR LAW  
TO MEET THE CHALLENGES OF THE 21ST CENTURY**

**INTRODUCTION**

The Council of Nordic Trade Unions (NFS) has, upon a request from its member organisations, coordinated common reactions from the Nordic trade unions on the Green Paper on Labour Law. These joint comments are based on the shared characteristics of Nordic labour markets, which are – to a great extent – regulated through collective agreements. In addition to this joint Nordic reaction, each member organisation may send in their own comments to the ETUC according to the normal procedure.

**GENERAL COMMENTS**

The Nordic trade unions welcome a European debate on how labour law can evolve to support the Lisbon Strategy’s objective of achieving sustainable growth with more and better jobs. It is important that the Commission and the Member States take concrete initiatives to promote the right balance between the competitiveness of businesses and the interests and well-being of employees.

The Commission’s Green Paper is, in our view, based on a few implicit assumptions. The focus is above all on the need for more flexible labour markets and according to the Commission, the modernisation of labour law must go through flexicurity.

It is, however, crucial to state that flexibility can entail both negative and positive aspects. Positive flexibility entails visionary life-long learning opportunities for employees and a committed cooperation that encourages development, innovation, trust and tolerance. Negative flexibility only focuses on easy firing of employees.

Flexicurity is a wide concept, which the Commission does not define further in the Green Paper. It is important to consider flexicurity in its proper context and we believe that the national framework is the right point of departure. The task to ensure flexibility and security in the labour market is the responsibility of each Member State, either

through collective agreements between social partners or legislation – or a combination of the two. EU labour law should supplement and underpin national measures.

In the Nordic countries, the issues discussed in the Green Paper are to a great extent dealt with by the national social partners through collective agreements. A well developed social dialogue with broad collective agreements offers great flexibility in itself and allows for adjustments at the appropriate levels. An approach based on legislation could undermine the flexibility in the Nordic systems of collective bargaining and thereby limit the social partners' autonomy.

The Nordic trade unions are of the view that the role of the EU and its Member States should be to encourage and support trade union organisation and social dialogue at all levels – including binding European agreements between the social partners – in order to promote the right balance between security and flexibility.

In this context, we would like to point to the need for transparent and coherent rules for the European labour law system. The autonomous agreements between workers and employers have enjoyed an uneven and often ambiguous status in the implementation at national level. Clear rules, including a dispute settlement system, need to be established to enable the European agreements between social partners to develop into an effective and flexible tool. It should be beyond doubt that the autonomous agreements are legally binding and mechanisms must be created to solve any conflicts that might arise regarding their implementation.

## **THE KEY POLICY CHALLENGES**

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

The Nordic model of collective bargaining differs from other labour market models in that the Nordic labour markets are to a great extent regulated through collective agreements, which are administered by strong social partner organisations. This ensures a high degree of flexibility, significant employment security and an efficient implementation and surveillance.

A meaningful European labour law reform agenda must take into account the different national traditions in the field of collective bargaining and labour law. As for concrete examples where a European dimension can be meaningful, the following should be mentioned:

- To promote full employment, productive labour and social cohesion, the starting point must be an employment contract in standard form and valid until further notice.
- Atypical employment conditions must not be used to circumvent collectively agreed or legislated conditions at work.

- Redundant employees should be secured the right to another employment within the same company if possible.
- Redundant employees should be offered training to support their transition to a new job.
- Framework rules for the European agreements between social partners, including a dispute settlement system, need to be established to ensure proper implementation in all Member States. This is a task for the social partners.
- Parents should be guaranteed paid parental leave in order to facilitate the reconciliation of work and family life.

## **2. Can the adaptation of labour law and collective agreements contribute to improved flexibility and employment security and a reduction in labour market segmentation?**

In general, experience tells us that a good balance between flexibility and security can be achieved by giving the task of regulating employment conditions to the social partners. Collective agreements, both at the European and the national level, should be updated regularly to adapt to developments and to avoid labour market segmentation.

Commitment to lifelong learning and to a good work environment also contributes greatly to reduction in labour market segmentation.

## **3. Do existing regulations, whether in the form of law and/or collective agreements, hinder or stimulate enterprises and employees seeking to avail of opportunities to increase productivity and adjust to the introduction of new technologies and changes linked to international competition? How can improvements be made in the quality of regulations affecting SMEs, while preserving their objectives?**

In the Nordic countries, the collective bargaining models promote, rather than hinder, flexibility, productivity and new technologies. Collective agreements do, to a greater extent than legislation, offer the possibility to adapt measures/regulations to different sectors and businesses, whether small or big. A well-functioning labour market, based on good cooperation between social partners provides businesses with stability and consistency, which is a precondition for a long-term commitment to competence development, innovation and new technology.

## **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?**

There is no need to add to the existing array of employment contracts, because flexibility can be developed within standard employment relationships through collective agreements, supported by well-designed unemployment benefit systems, active labour market policies and lifelong learning.

Flexibility must truly be a two-way process. Taking into account the actual possibilities for flexibility in the employee's current situation will result in a positive commitment from the employee. Flexible working time systems must, moreover, be developed in a way that promotes the accommodation of family duties and work needs.

## MODERNISING LABOUR LAW

### Employment transitions

**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?**

As outlined above, stable and secure employment conditions carry their own inherent value. Labour market flexibility should be seen as just one part of a triangle, which also includes a generous unemployment benefit systems and active labour market policies (as in the Danish flexicurity model). Competence development and training are important features in strengthening individual employees.

**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?**

The responsibility of continuously maintaining employees' value on the labour market should be shared between employers, the employees themselves and society. It is in the interest of all that employees have such a broad know-how that they are not tied to one type of work but can make transitions between jobs. Training and education is crucial in order to maintain workers' employability and to develop the businesses where they work.

It should be underlined in this context that precarious and atypical work generally does not promote training and learning, as businesses are by and large only willing to invest in training of permanent employees.

In the Nordic countries, there are a number of examples of measures supportive of employment transitions, which have been developed through agreements between the social partners at national level. These measures concern both continuous training and support/training-packages for redundant employees.

### Uncertainty with regard to the law

#### **7. Is greater clarity needed in the Member States' legal definitions of employment and self-employment to facilitate *bona fide* transitions from employment to self-employment and *vice versa*?**

In a labour market with increasing prevalence of atypical work, disguised employment and economically dependent work, the need for greater clarity in the definition of employment is necessary. Such a definition must be based on the different national labour market systems. In this context, it is the actual employment relationship that should be the guiding light, not how the partners define their relationship.

Having said this, we are of course of the view that entrepreneurship must be supported and encouraged to make it a viable and attractive option alongside paid employment, but it must be based on the free choice of the person undertaking the work.

#### **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?**

See the answer to question 7.

### Three Way Relationships

#### **9. Do you think the responsibilities of the various parties within multiple employment relationships should be clarified to determine who is accountable for compliance with employment rights? Would subsidiary liability be an effective and feasible way to establish that responsibility in the case of sub-contractors? If not, do you see other ways to ensure adequate protection of workers in “three-way-relationships”?**

As the example of Finland has shown, problems of workers involved in extended chains of (often cross-border) sub-contracting can be addressed by making principal contractors responsible for the obligations of their sub-contractors under a system of joint and several liability.

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

In some of the Nordic countries, the status of temporary agency workers is defined in collective agreements. The possible implementation of a Directive on Temporary Agency Workers must therefore respect such agreements.

### Organisation of working time

**11. How could minimum requirements concerning the organisation of working time be 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 organisation of working time should be tackled as a matter of priority by the Community?**

The big challenge here is to facilitate reconciliation between working life and family life, which in turn will create more and better jobs and contribute to the demographic development in Europe. A prerequisite for this is equality between men and women, both on the labour market and at home. It is important that working time is organised to create space both for work and family life.

The Nordic trade unions therefore support an end to the opt-out in the Working Time Directive and maintain that passive working time must be seen as working time, unless otherwise stipulated in collective agreements.

In general, however, working time arrangements should be laid down in agreements so that the employees can influence their own working time arrangements. Flexibility can best be realised through collective agreements where special sector-specific characteristics can be taken into account.

In today's labour market, we see a trend towards borderless work, where the workers take work with them home. Such blurring of borders between working time and free time can be harmful for the worker's health. There must be adequate time for rest and relaxation so that working hours are used efficiently and safety in the workplace is maintained.

### Mobility of workers

**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 interest 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?**

In principle, workers should fall under the regulations of the country where they work. To facilitate mobility across borders, it is important that workers who take up work in different EU/EEA countries do not lose acquired rights when they move. It is vital that Member States retain their discretion in the definition of posted workers and self-employed workers.

### *Enforcement issues and undeclared work*

#### **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?**

Both at national level and across borders, there is a need for strengthened cooperation between the relevant authorities and the social partners. The exchange of information between authorities in different EU countries should be reinforced to improve enforcement and to combat social dumping.

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

All possible measures should be taken to combat the problems of undeclared work and the grey economy. This applies both to preventative measures and, not least, to actions from law enforcement agencies. Social dumping and the evasion of taxes distort competition, undermine public services and the welfare system, which is central to enhance social cohesion and to enable flexicurity in the labour market, and impair the success of Europe on global markets.

**The Council of Nordic Trade Unions (NFS)** was established in 1972 as an umbrella organisation for the trade unions in the Nordic countries. Its member organisations consist of blue collar, white collar and academic national trade unions in Denmark, Finland, Iceland, Greenland, Norway and Sweden. All together they organise more than 9 million members, representing about two thirds of the total Nordic labour force.

Member organisations:

- LO Denmark
- FTF
- AC
- SAK
- STTK
- AKAVA
- LO Sweden
- TCO
- SACO
- LO Norway
- YS
- UNIO
- ASÍ
- BSRB
- SIK