

The Platform of European Social NGOs (Social Platform)

The European Anti-Poverty Network (EAPN)

The Finnish Federation for Social Welfare and Health

The German Association for Public and Private Welfare
(the Observatory for the Development of Social Services in Europe)

**Contribution to the EU Presidency conference
EUROPEAN UNION'S EVOLVING SOCIAL POLICY
AND NATIONAL MODELS – Seeking a New Balance
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The Platform of European Social NGOs (Social Platform), the European Anti-Poverty Network, the Finnish Federation for Social Welfare and Health and the German Association for Public and Private Welfare (the Observatory for the Development of Social Services in Europe) appreciate the opportunity provided by the Finnish Presidency to participate in the conference “European Union’s Evolving Social Policy and National Models – Seeking a New Balance” and would like to put forward the following key messages.

1. A better balance between economic and social objectives is crucial for the future of the EU

The legislative competence of the European Union is based on the competence given to it by the Member States in its Treaties, its specific competence in the field of social security and social protection being quite limited. However, the four civil society organisations have observed the gradual but increasing influence of the EU on national social policies. This has happened mostly indirectly through the implementation of the Community rules on the internal market and competition and, thus, largely influenced by an economic agenda.

The four organisations also take note of the prominence of the “growth and jobs” strategy, which enjoys a broad support amongst different Member States. It is important to highlight that, whereas the initial Lisbon strategy emphasized equal and mutually reinforcing economic, employment and social objectives, the revised strategy mainly concentrates on economic growth and employment policies. Consequently, there is widespread concern amongst civil society organisations in the social sector that the 2000 objectives of “greater social cohesion”, “better jobs” and “a decisive impact on the eradication of poverty” are now subordinated to economic considerations.

While a successful economy and a high level of social protection are obviously interdependent phenomena, it is essential to acknowledge that an effort to fully integrate – or subsume – the social policy into the policies on internal market, industry, competition and trade is problematic, because these different policy areas inevitably have also contradicting goals. Prioritising between them requires political, value-based decisions. Member States seeking a right balance in such prioritisation between the social and economic goals should be encouraged by the fact that, according to researchers, investing in social protection pays off – social cohesion, economic growth and high employment are mutually reinforcing.

It may not be a coincidence that the above mentioned concern has arisen at the same time as the EU is facing a major legitimacy crisis illustrated, for instance, by the rejection of the Constitutional Treaty in the referenda of France and the Netherlands. In the experience of NGOs, people assess the EU based on the impact it has on their personal lives. In the situation where 72 million people are experiencing poverty in the EU, this is a hard test and presents a strong call for acknowledging the importance of the social dimension. Ultimately, the issue of legitimacy boils down to the question of how well the performance of the EU is perceived to reflect the common values of its Member States and their citizens. Traditionally, values such as equality, solidarity and high social standards feature high on their list. Should these be seen as superseded in the interests of the market, the EU's legitimacy is bound to be called into question.

Therefore, the four organisations are convinced that it is crucial for the EU to consider carefully the impact of the decisions that are being made in the field of the economic policy on social protection. While the principle of subsidiarity and Member States' national competencies should be retained in social protection, it is at the same time possible – and recommended – to give more weight on social considerations in the decision-making in different fields (including, for instance, by involving officials and other stakeholders responsible for social protection).¹ Active use of the Open Method of Coordination as a means to pursue a higher and more coherent level of social protection is also recommended.

2. The adoption of a Constitutional Treaty which includes a clear legal framework for our common social values is a key to relieving the tensions between market freedoms and social rights

The EU was founded on the agreements on customs union and removal of all legal and administrative obstacles to free movement of goods, services, capital and people. These fundamental freedoms have acquired a central role in the development of the EU through their primacy and immediate legal force as confirmed by the European Court of Justice (ECJ). At the same time, there has often been clear tension between these market freedoms and the social objectives of the EU treaties. Given that the four freedoms are part of the core legislation (“hard law”) of the EU, whereas people's fundamental rights derive their force

¹ A good example of a piece of legislation where it is felt that more attention should have been paid to the social protection aspects is the draft directive on services in the internal market. In its drafting and adoption process the parallel process of examining the characteristic of social services of general interest, as well as the special nature of social services in general, appear not to have been adequately taken into account. This in spite of the fact that the directive and the interpretation of the social services of general interest may have significant consequences to the organisation of the social protection systems of the Member States.

from their status as general principles (“soft law”), the existing jurisprudence of the ECJ has been dominated by the former.

The development of the fundamental rights culminated in the adoption of the Charter of Fundamental Rights of the Union and its inclusion in the Constitutional Treaty, which has been signed but not yet ratified by all Member States. The ratification of the Constitutional Treaty would be significant in the sense that the Charter of Fundamental Rights would thereby gain full legal force.

Meanwhile, as noted above, the rights the Charter of Fundamental Rights contains do have legal force over the EU and its Member States as general principles of the community law. Thus, they should be taken into account in adopting and applying all legislation. They should also direct all decision making by the Council, the Parliament, the Commission and the Court. Although the freedoms of the internal market provided for by the Treaty are a part of the core legislation of the EU, they can be restricted on certain conditions, provided that the reasons to do so are acceptable from the point of view of the EU law. To do so, it should first be checked whether an issue falls under the application of a fundamental freedom, after which it can be examined whether an intended restriction can be justified with objective reasons and whether it would meet the criteria of non-discrimination and proportionality. Justified reasons for such restrictions would include, for instance, public order and security. Generally, basic social rights should be actively utilised in defending welfare rights against market pressures.

Besides the inclusion of the Charter of Fundamental Rights, the Constitutional Treaty included other positive developments from a social perspective. It would, *inter alia*, allow the accession of the EU to the European Convention on Human Rights, it embraces many of the values – old and new – upheld by the societies of the Member States, such as human dignity, equality, the rights of minorities, pluralism, tolerance, social justice and solidarity. It contains various social objectives (Art. I-3) and recognizes the importance of participatory democracy and the role of civil society organizations (Art. I-47). It requires new efforts to mainstream social protection and social inclusion concerns (Art. 111-117). As regards the ongoing discussion on services of general interest, it should also be noted that in its article III-122 it provides for new competence for the EU to adopt legislation concerning services of general economic interest, which could, if utilised well, also help balance the market.

At the same time, the four organisations believe it is time for EU Heads of State and of Government to acknowledge that one of the most common criticisms of the EU Constitutional Treaty is of its lack of a strong social dimension. This requires that the current debates on the future of this Treaty – or any possible alternatives or additions to it that might be suggested in the future – result in a strengthening of its social dimension. It also requires finding an effective mechanism to ensure that social policies (or fiscal policies or services of general interest), which are mainly national competences, are not distorted by EU economic and market policies.

The services directive, the impact of the stability pact or fiscal and social dumping are topics debated hotly across Europe. In the midst of these debates, many people would expect concrete assurances that a new Constitutional Treaty would ensure respect of the subsidiarity principle and that objectives such as a high level of social protection, quality

services of general interest and investment in human and social capital would not be threatened by EU policies. The issue is structural and requires considering new forms of governance aimed at establishing a fair balance between social and economic/internal market objectives. Angela Merkel's proposal to add a "social protocol" to the constitutional treaty, Guy Verhofstadt's idea of a socio-economic governance or Romano Prodi's latest proposal for a shorter and more social Treaty for Europe indicate that some EU leaders are fully aware of the challenge ahead and are ready to reflect on concrete solutions.

In light of the above, social NGOs call on EU Heads of State and of Government to take ambitious steps to make sure that the EU social objectives are more visible to the citizens and no longer threatened by the EU economic and single market objectives. This would mean also developing both the concept and the practice of socio-economic governance, whereby it would be ensured that social actors such as Employment and Social Affairs Ministers, national Parliaments, social partners and civil society are pro-actively involved in shaping all EU policies.

It is further requested that the EU Heads of State and of Government ensure that the way forward in relation to the Constitutional Treaty results in a strengthening of the social dimension of the European Union project and does not result in any watering down of the social commitments already provided for in the present Constitutional Treaty

3. A balancing act is also required as regards flexicurity

Flexicurity is high on the EU's list of means to advance its policy of growth and jobs as outlined in the Lisbon strategy. It aims at increasing the flexibility for businesses to "hire and fire" employees, while providing a higher level of security to the employees both through an active labour market policy and generous social benefits. The system is based on the idea that greater labour market mobility can considerably enhance the competitiveness of businesses, which can thereby better adjust to the varying needs of the market. Security of employment is considered more essential than job security, and it can be achieved through intensive activation, training and education measures, which help to ensure that periods of unemployment remain short. Furthermore, a comprehensive and effective social protection system is to guarantee that the employees are not adversely affected by their (recurring) periods of unemployment. The ownership of the approach by all parties concerned is gained by an extensive social dialogue, through which the concrete agreements on its implementation are reached. According to a Presidency paper, "reflections on flexicurity address the question of how both European competitiveness and the European social model can be maintained".

Flexicurity, understood as described above, does indeed have a lot of potential. However, there is no common understanding of the concept and many different perceptions prevail among the public at large. Eventually, much depends on how it is implemented in practice. NGOs are concerned that policies may be turning in practice more towards flexibility which benefits employers and less towards flexibility which benefits workers, paying less attention to security, particularly for the most vulnerable groups in society. Taken to the extreme, such policies may rather risk leading to "flexploitation" or "flexinsecurity", whereby employment

rights are drastically decreased while the companies increase profits. In the worst case scenario, it could result in growing segregation of the labour market, along with increasing poverty and exclusion amongst the poor and the vulnerable.

In a similar vein, it has been observed by NGOs that an activation policy can take basically two forms: those which aim for social inclusion and professional mobility by empowering benefit claimants, and those which force people into jobs through conditions placed on benefits, and low levels of social protection. Consequently, it is highlighted that the activation measures should be supportive, not stigmatising and penalising. A research has showed that success in getting a job depends on skills, resources, competences and networks rather than coercive methods.

Therefore, it is indeed crucial to bear in mind that flexicurity requires a comprehensive approach. It must genuinely incorporate all the key elements, including the effective safeguards to secure the social protection of employees at all stages and situations of their working life. In this regard, it should also be kept in mind that the employees have their own needs for flexibility, for instance in terms of working hours or part-time contracts that would fit the personal situation of the employee in question. This is particularly important to support women, and the work/personal life balance, as well as people who have been out of the labour market for a long time and need an adapted work environment to help them integrate into the labour market. Greater flexibility e.g. towards elderly employees and people with disabilities and other special needs would also be required to address the needs of the changing labour market in an aging society. In general, a strong emphasis on social investments is essential for a balanced application of flexicurity.

Thus, a holistic approach needs to be adopted in relation to flexicurity, which can not be considered merely as a labour market issue but concerns equally the social protection systems. Therefore it requires that all relevant Ministries (not just employment ministries) and all relevant actors (not just social partners) are engaged in the debates and developments in relation to this concept.

4. NGOs' unique role in the promotion of social protection and social cohesion should be recognized

In many countries, NGOs form the core of the civil society. They play an important role by providing opportunities for citizens to participate and influence the policies, by strengthening the social cohesion and creating the social capital, thereby also enhancing political stability. NGOs are active in nearly all segments of human activity. Their actions are defined by voluntariness, democracy, independence from the government, and acting in public interests. The results of their actions cannot be extracted from accounts, in which the input of voluntary workers cannot be included in financial terms. In practical terms, NGOs in the field of social welfare and health make an important contribution to ensuring the fulfilment of people's fundamental social rights.

NGO work differs essentially from both public and commercial sectors (considering e.g. the involvement of voluntary workers, diversity of services provided – including even to small,

marginal groups – , the enforcement of social contacts/networks, participation of the recipients of the services). It should not be inadvertently affected by hasty measures. It appears that there is a risk of developing national policies in the name of the EU law, whereby their impact on the civil activity and NGO work is not thoroughly thought through. This is due to the fact that goes too often unnoticed, namely that the EU rules on internal market, which are increasingly penetrating the social sector, do not differentiate actors based on their legal status. NGOs are thus put in the same category with businesses, in spite of their profound differences.

In its Communication on supporting NGOs and Funds in Europe (COM (1997) 241) the Commission analysed the position of NGOs in the EU Member States, including from the legal and fiscal point of view. It acknowledged the important role played by the NGOs with regard to the social cohesion, and observed that they are particularly active in the fields of social services and sports. The communication noted that a regular dialogue had begun between the NGOs, the Commission and the European Parliament in the context of the intergovernmental conference. Discussions were held, *inter alia*, on establishing a legal basis for the work of NGOs at the EU level.

NGOs call for the current and future Presidencies of the EU to highlight and continue to acknowledge the important role that the NGOs play in societies, as well as to recognize the fact that their work differs essentially from that of commercial businesses. It is requested that the work be resumed to strengthen their position, including by way of a formal consultative status both at the national and at the EU level.