



UNION EUROPEENNE DE L'ARTISANAT ET DES PETITES ET MOYENNES ENTREPRISES
EUROPÄISCHE UNION DES HANDWERKS UND DER KLEIN- UND MITTELBETRIEBE
EUROPEAN ASSOCIATION OF CRAFT, SMALL AND MEDIUM-SIZED ENTERPRISES
UNIONE EUROPEA DELL' ARTIGIANATO E DELLE PICCOLE E MEDIE IMPRESE

**Green paper
Modernising Labour Law to meet challenges of the 21st century**

Position of UEAPME

Introduction:

With the publication of the Green paper on labour law, the European Commission aims at launching a public debate on how labour law can evolve to support the Lisbon Strategy's objective of achieving sustainable growth with more and better jobs in a constant changing environment.

One of the main tasks in modernising labour law should be to increase the responsiveness of European labour markets to change and innovation in order to enhance Europe's economy competitiveness, ensure full employment, labour productivity and social cohesion.

UEAPME welcomes the launch of this important debate, but would like to stress very much that the main competence to modernise labour law lies with the Member States.

General remark

Labour law constitutes one of the basic components of the relationship between employers and workers. Its main role should be to ensure a smooth functioning of labour markets while guaranteeing a fair treatment of workers.

However every single labour law change, be it a minor adaptation or a more in depth reform should be carefully considered by social partners which legitimately represent the interest of the economy.

If we want to promote the competitiveness of the European economy the distribution of the European businesses should seriously be considered when dealing with labour law questions.

Taking into account that 99% of companies in Europe are SMEs and that 92% of them are micro firms with less than 10 employees, the "think small first" approach should prevail.

This is even more justified if we consider that one in four workers is employed in companies with less than 10 persons and one in two in companies with less than 50 persons.

The analysis provided by the Commission in the present green paper correctly outlines the challenges Europe is facing. However we strongly regret that the current document at some stages is lacking more in depth thoughts and sound analysis concerning the real causes of the current unsatisfactory labour market situation.

Moreover the negative image given by the Commission of the various types of atypical work contracts and of self employment is not justified. UEAPME regrets that the Commission focuses on the negative aspects of atypical work contracts such as poverty traps or precariousness and hardly recognises the role of this type of work contracts as a stepping stone for entering the labour market and facilitating access to permanent contracts.

A sound modern and competitive economy based on services should dispose of different forms of work contracts in order to cope with the flexibility needs of enterprises and workers alike.

Concerning the increase of self employment, the Commission presents it as a negative trend of the labour market, when its development is the best sign of the dynamism of a modern economy. Self employment highly contributes to entrepreneurial spirit, an area where Europe is very much lagging behind compared to its main competitors in the world. Therefore it should be strongly encouraged instead of presenting it as mainly bogus self employment, which should be clearly combated as well as undeclared work.

I - QUESTIONS ON A MORE RESPONSIVE REGULATORY FRAMEWORK

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

The first overarching priority should be a greater flexibility on the labour market, which goes hand in hand with an appropriate employment security for workers and companies alike.

Employment security is not any longer provided by more employment protection and additional rights, but mainly through the opportunity to easily find a job and to maintain a good employability level through lifelong learning.

In this context, applying the flexicurity concept can only find satisfying solutions at national level, because of the strong link between labour law, social protection systems, active labour market policies and social dialogue, which are mainly designed at national level.

The second equally important priority for a meaningful labour law reform should be the reduction of non wage labour costs. But here again the solution exclusively lies with the Member States.

In the labour law reform agenda, the role of the European level should be to define broad common guidelines and to facilitate exchange of experiences and not to intervene in the legislative field.

Instead of trying to harmonise labour law at European level through additional legislation, it would be better to help companies to create more jobs through the establishment of a more business friendly environment.

Priorities at EU level

The flexibility aspects of the flexicurity concept are based on internal and external flexibility. Working time is one of the main components of the internal flexibility, essential for small businesses.

Therefore there is a matter of urgency to find a solution for the calculation of on call-time in the context of the revision of the working time directive, heavily discussed during several presidencies.

One step further for flexibility would be that the directive defines a 12 months reference period for the working time as the general rule and that national social partners can extend it further through collective agreements.

Priorities at national level

Working time is an important topic at all levels. Therefore, all the possibilities given to social partners for specific arrangements of working time which exist in the current working time directive should be better exploited at sectoral, company and individual level in order to better suit the needs for flexibility of employers and workers without increasing the total working time. This could be very useful in sectors where work organisation requires specific flexibility because of the seasonality of the activity and for small businesses in general in order to adequately face the sudden variations of the demand.

Another equally important topic is the creation of a positive business environment through the reduction of non wage labour costs. In many countries the current level of non wage labour costs constitutes one of the main obstacles for hiring new employees in particular when it is about hiring the first employee.

Finally, serious talks about reforming the labour law must necessarily include the topic of recruitment rules. In order to facilitate the adaptability needs of companies and workers, a modern labour law should provide employers and workers a job protection legislation which does not hinder the creation of permanent contracts and at the same time offers a real choice between various types of flexible work contracts.

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 labour law framework is one of the most important dimensions for the creation of jobs, and the smooth functioning of the labour market and therefore for growth and competitiveness. Labour law and its design play a central role in the flexicurity debate.

The adaptation of labour law and collective agreements is key to improve flexibility and employment security and consequently to reduce the labour market segmentation.

But labour law should not be considered in isolation from the other labour market conditions, such as social rights, social protection benefits, unemployment benefits (amount and duration), other types of financial rights or benefits, but also continuous training system as well as tax system.

The origin of the segmentation of the labour market is clearly due to particularly rigid legislations and high employment protection which have been introduced in times of high economical conjuncture.

The request for more flexible recruitment and dismissal rules and the emergence of new types of work contracts are logical reactions.

In the Employment report 2006, the European Commission states clearly that employment protection legislation “may harm employment prospects of weak groups” such as young people, women, and long-term unemployed. It seems that employment protection legislation favours current “insiders” workers at the detriment of “outsiders” and penalises employment flows.

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?

Labour law and social legislation should by definition contribute to increase productivity and a good functioning of labour markets.

In the same way, European labour legislation should create a common framework with minimum rules which leaves enough space for national actors, be it governments or social partners, to adapt it at national, sectoral, regional, local, company level.

Examples of national measures that can help or hinder a better functioning of the labour market:

- In France the creation of the "contrat de travail intermittent" suits in particular the needs of companies in the retail and service sector. It is a permanent work contract adapted to jobs which by nature alternate between work and non work periods. However this contract is only accessible to companies which have negotiated an agreement or through a collective bargaining which concerns mainly larger companies. A concrete proposal for alleviating this rigidity and facilitating its use would be that small companies could directly have access to this type of contract without having the obligation to be covered by an agreement or by collective bargaining.
- In France, the existence of various social thresholds constitutes a real obstacle for recruitment due to the administrative burdens attached to them. Going over the social threshold of 50 employees means an increase of 4.16% by worked hour. The reduction of red tape linked to social thresholds would be particularly welcome.
- In Germany, the conclusion of fixed-term contracts is hindered by the so-called "pre-employment prohibition" (Vorbeschäftigungsverbot). The German law on fixed-term contracts "Teilzeit- und Befristungsgesetz" foresees that any person having worked for an enterprise -even as a trainee- can never be employed later on under a fixed term contract by the same company.
This interdiction is very heavy and should be limited to a 6 months period.

For SMEs in general, the hiring of workers is a central concern and should be as simple and non bureaucratic as possible.

Concerning more specifically one-person-enterprises without any employee, which is the case of 50% of all companies in Europe, according to the European Commission study, the main obstacles for hiring the first employee are twofold: the cost of wages, taxes and social contributions, and the level of administrative burdens and obligations such as regular reporting duties¹.

As mentioned in our introduction and as UEAPME constantly advocated, the "think small first approach" should particularly apply to labour law, with an in depth impact assessment before adopting any new legislation or revising existing ones. However the current impact

¹ http://ec.europa.eu/enterprise/entrepreneurship/support_measures/first_emp/index.htm

assessment procedure deals mainly with the administrative dimension. UEAPME insists on the need for an urgent reform of it, which would include in addition to the administrative dimension, the social and economic consequences for SMEs and micro companies before the introduction of any new legislation. This is of particular importance for micro, craft and small businesses which suffer the most from the complexity of legislation and the administrative burdens.

In terms of legislation, texts should be limited to the core elements. One example of a rather detailed European legislation is the working time directive, which makes its practical implementation at national level particularly complex.

Moreover the EU initiative of better legislation should apply urgently to social legislation, in particular in the field of health and safety and non discrimination directives, not only at EU level but also in their implementation at national level.

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?

The Commission seems to be considering the increase of atypical work contracts during the last years in certain Member States as a worrying phenomenon.

In this context, it is important to recall that still around 80% of work contracts are full time, indefinite duration contracts in Europe and that 18.4% of workers are part-time workers with also indefinite duration contracts.

Fixed-term contracts count for around 14.5 % of the workforce in the EU and temporary work for 2% of employment across the EU².

Part-time work is particularly well adapted to suit the flexibility needs of companies and workers. Moreover part-time workers are protected against discrimination and therefore cannot be considered as "precarious workers". Fixed-term contracts are one of the main tools for facilitating the entry of people in the labour market. In the same way, temporary contracts are more and more used by employers as trial period for permanent contracts. Temporary agency work highly contributes to the fluidity of labour markets through its increasing role as a stepping stone for outsiders for entering the labour market.

There are several reasons behind this evolution of using atypical work contracts, the main ones being:

- The pace of change, which obliges companies to adjust very quickly using all the possibilities of internal, external and numerical flexibility,
- The difficulty for SMEs to have a clear view of future markets and demands,
- the rigidity of current rules for indefinite duration contracts which does not allow for sufficient flexibility for employers in case of dismissal necessity.

What is needed is the introduction of more flexibility in the indefinite duration contracts. A basic element for encouraging recruitment is the revision of dismissal rules. Many employers are very reluctant to propose indefinite duration contracts, because firstly they are not sure about the future of their economic activities and secondly they are facing huge difficulties

² Employment report 2006

when it comes to terminate an employment relationship regulated by an indefinite duration contract.

It is important to notice that many small companies, which are confronted with the lack of qualified workforce and which have to compete with large companies for recruitment and staff retention are doing their best to hire staff under indefinite duration contracts.

They particularly try to attract qualified and non qualified workers who can be trained, and retain them once they are more experienced with permanent work contracts even if it could be risky for the company.

More flexible permanent work contracts would clearly encourage them to create more new jobs and to hire additional workforce.

II - QUESTIONS ON MODERNISING LABOUR LAW

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?

The proposal of the Commission is very much inspired by the Danish flexicurity model, which UEAPME supports. However, the transfer of the Danish model cannot apply so easily to the other Member States, since it is very much influenced by the national specificities of the social protection system, its financing, the mentality of the population, the efficiency of the active labour market policy in place, in particular the individualised accompaniment of unemployed and the central role of training as well as the quality of the industrial relation system and the tax level.

Therefore each Member State should define its own flexicurity model according to its national situation.

Nevertheless, even if the starting point differs from country to country, there is a real need to revise in each single Member State the employment protection legislation and to balance it with a well-designed unemployment assistance based on the two pillars, adequate compensations but limited in time and cost efficient active labour market policies. But this can only be successful if the national framework conditions are adapted according to the national specificities.

In any case, the revision of the unemployment benefits system should be accompanied by controls and clear obligations for unemployed, in particular to accept placements and jobs, to speed up their reintegration in the labour market and if necessary by imposing sanctions.

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?

In the field of access to training, law and collective agreements are complementary. Collective agreements play an important role in facilitating access to training and helping mentalities to evolve.

In the field of lifelong learning, a close tripartite partnership is absolutely necessary because of the shared responsibilities of employers, individuals and public actors to invest in it. The

European framework of actions adopted by the European social partners and the various follow-up reports have shown in particular the necessity for a strong awareness raising in updating skills, for a clear change of mentalities in order to better motivate the less qualified for the lifelong learning, the need for guidance particularly for small businesses and workers, the need for a better training offer adapted to labour market needs and the need for incentives in particular financial incentives for investments in lifelong learning.

In countries, where legislation on training leaves exists, the legislation has essentially been put in practice through collective agreements, which defines how the practical aspects of the continuous training, in particular when and how it takes place (during or after the working time) and how it is financed.

As in most cases, collective agreements give the possibility to derogate from legal provisions, so that it provides more flexibility at a lower level. Collective agreements should allow for a better adaptation to the realities of companies and workers on the plant level. One example could be a trade off between more working time flexibility in times of high demand and continuous training in times with lower demand.

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

Each Member State developed its own system mainly based on historical reasons and therefore no greater clarity is needed. Consequently in the case of bogus self-employment, the problems have to be solved on a case by case basis and clear rules already exist including the re-qualification of the work relationship if necessary and even fines.

Some countries like Italy or Spain have created a new category of workers called “economically dependant workers” in order to face the existence of a new reality between workers and self-employed. However we don’t see any added value to extend this new category at European level.

What is more important is the existence of a sufficient level of protection of the individual at national level.

One example could be the creation of a voluntary unemployment insurance for self-employed as proposed by the Austrian Economic Chamber for Austria. In the same way, in order to facilitate transitions from employment to self-employment, some fiscal incentives could be put in place.

In addition, and in order to facilitate transitions from employment to self employment, the question of continuity of social protection rights could be further investigated at national level.

Self employment is essential for the development of entrepreneurship and should not be undermined under the pretext that “false self-employed” or bogus self employment could exist.

Self employment is by definition characterised by autonomy, independency and self organisation. Therefore self-employed basically don’t request additional labour regulations.

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?

We don't see any need for a “floor of rights” dealing with working conditions, since the underperformance of our labour markets and the high level of unemployment are mainly due to too many rigid labour laws and regulations and not to a lack of rights.

The European legislation in the field of working conditions is already sufficiently developed and we don't see any need for further reinforcement of it.

The creation of a “floor of rights” would increase the trend to use more “so called precarious contracts”, to encourage undeclared work and finally increase the unemployment rate, notably if the unemployment benefits systems are going towards higher income compensation.

At the end it will be contra-productive in terms of job creation and in the protection of workers.

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"?

It is highly necessary to distinguish between the various cases of triangular relationship.

Temporary agency work is by nature a triangular relationship, where the agency is the employer and therefore has the responsibility for protecting the agency workers in accordance with the national legislation in place. The worker sent to the user company fully remains under the legal responsibility of the agency.

In the case, where a temporary agency offers its services as a placement office, the temporary agency has no role as employer. The worker is directly employed by the company without any further triangular relationship.

Concerning subcontracting and in particular subsidiarity liability, a great diversity already exists among countries and sectors and the best suited solution can only be found at national and sectoral level.

Subsidiarity liability is very burdensome for SMEs which don't have the resources to monitor the possible subcontractors and effectively control compliance, in particular employment rights compliance of each single company.

In conclusion, UEAPME is not in favour of having a general rule of subsidiary liability.

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

At national level, the employment status of temporary agency workers is well defined within a triangular relationship.

At European level, the proposal for a directive which was put forward after the failure of negotiations among the European social partners in 2002 and is still pending at the Council level, did not identify the employment status as a problem for temporary workers. The main problem is about how to apply the non discrimination principle.

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

The first priority should be to solve the question of “on call time”, in order to stop the negative effects on the healthcare systems and the private economy as a consequence of the European Court of the Justice judgment in the Simap/Jaeger case.

The current proposal of the Commission to create the concept of an “inactive part” of on call time which shall not be regarded as working time unless national law or, in accordance with national law and/or practice, a collective agreement or an agreement between the social partners decides otherwise, is a reasonable proposal which could be easily accepted at European level.

Equally important is that the directive includes a clause for a general reference period of 12 months for the calculation of the average working time not depending on a collective agreement or agreement between social partners, but with the possibility to extend it further through collective agreements.

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?

We don't see any need to have a definition of a “worker” at EU level. In most cases the directives refer to national definitions of “worker” and doing so they respect the subsidiarity principle.

Moreover, most EU directives in the social field define minimum rules, which have to be transposed at national level and therefore contribute to creating an even playing field in each single Member State.

What is more urgently needed is the reduction of administrative burdens and the removal of existing obstacles for cross-border activities and particularly services.

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?

The administrative co-operation between the national authorities is essential for a better control of the respect of labour law in each Member State, particularly in the context of posting of workers. This co-operation should take place primarily in the area of cross-border services and should be completed by an efficient enforcement procedure.

This specific task of administrative cooperation is not the role of social partners.

Nevertheless social partners can usefully contribute to a good enforcement of Community labour law, by raising awareness of the existence of labour law and giving tailor-made explanations about the content of EU legislation to companies and workers and facilitate its correct implementation.

One good example is the health and safety area where social partners play an active role in the practical implementation through practical guides and a lot of counselling activities in this field.

Another practical example is the activity developed under the EC's PHARE programme by European social partners, such as the two projects run by UEAPME "Business Support Programme I and II", in view of preparing European enlargement and familiarising Craft and SMEs with the community acquis, in particular labour law.³

In the same spirit, the joint integrated programme of the European social partners in the field of social dialogue which started in 2003 also contributes to the same objective.

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

The administrative co-operation between the national authorities can also strongly contribute to lowering if not eradicating undeclared work.

Undeclared work is a complex phenomenon and its causes are multiple. Therefore combating undeclared work requires a good policy mix, with an adaptation of labour law, a simplification of administrative obligations with hiring and firing, consistent wage policies, fiscal incentives, improvement of public infrastructure and public services but also controls and therefore dissuasive sanctions.

The European Commission could support actions taken by social partners at all levels but mainly national or sectoral level. The European Commission should also take the lead in order to gather good practices and facilitate its dissemination among the Member States. Undeclared work can only be combated effectively if all levels are strongly committed to it.

Combating undeclared work is one of the topics of the EU social dialogue work programme 2006-2008 and where European Social Partners foresee further discussions.

Conclusions:

UEAPME welcomes the debate launched by the Green Paper on the need to modernise labour law.

³ <http://www.ueapme.com/business-support%20II/index.htm>
<http://www.ueapme.com/business-support/>

The debate should take place in the context of the broader ongoing discussions on the flexicurity concept.

The objective of modernising labour law should lead to:

- better fit the current labour market reality,
- take the needs for flexibility of employers and workers better into account when ensuring more employment security,
- modernise social protection systems to facilitate the entry or re-entry in the labour market,
- combat undeclared work,
- facilitate the hiring of workforce by SMEs through less bureaucracy and rigidity of the legislation,
- promote entrepreneurship spirit,
- contribute to create more and better jobs.

Brussels, 02/03/07