European Economic and Social Committee

SOC/246
Modernising labour law

Brussels, 30 May 2007

OPINION

of the European Economic and Social Committee
on the
Green Paper – Modernising labour law to meet the challenges of the 21st century
COM(2006) 708 final

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Rapporteur: **Mr Retureau**

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On 22 November 2006, the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Green Paper - Modernising labour law to meet the challenges of the 21st century
COM(2006) 708 final

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 May 2007. The rapporteur was Mr Retureau.

At its 436th plenary session, held on 30 and 31 May 2007 (meeting of 30 May 2007), the European Economic and Social Committee adopted the following opinion by 140 votes to 82, with four abstentions.

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1. Introduction

1.1 The Green Paper on modernising labour law sets out to:

- identify the main challenges that arise out of a gulf between the existing legal and contractual frameworks and the realities of the world of work. The emphasis is mostly on labour law as it applies to individuals, rather than collective labour law;
- launch a debate on how labour law could help to promote flexibility combined with security in work, regardless of the type of contract, and help to create jobs and reduce unemployment;
- stimulate the debate on the way in which different types of contractual relationships, and labour laws applicable to all workers, could benefit both workers and businesses by facilitating transitions on the labour market, encouraging lifelong learning, and developing the creativity of the labour force as a whole;
- contribute to the goal of better lawmaking by encouraging the modernisation of labour law, without forgetting to consider the overall costs and benefits thereof, and in particular the problems that small and medium-sized enterprises may face.

1.2 In doing this, the Green Paper quite rightly proposes to address issues as diverse as three-way employment relationships, the case of workers with self-employed status who are in reality economically dependent on their principal, as well as the revision of the working time directive and the serious matter of undeclared work.

1.3 With regard to the possible ways of modernising labour law, where the EU can undertake action complementing that of the Member States, the Green Paper is based on the idea that the

standard contract (full-time, permanent contract) and the protections that go with it may turn out to be unsuitable for many employers and employees, hindering the rapid adaptation of business and developments in the market, and may therefore act as an obstacle to the creation of new jobs. For this reason, these provisions should be revised.

1.4 The Commission announces that the Green Paper, aside from the issue of individual labour law, paves the way for a debate that will feed in to a communication on flexicurity, to be published in June 2007 with the aim of fleshing out this concept, which exists in several Member States and, according to what we know, combines external and internal flexibility of workers with some kind of security whose scope and funding is not explained in any more detail at this stage. The debate in the second half of the year will thus continue over a wider subject area, within which it would certainly be helpful to look at the elements of flexibility that have already been achieved through the law or collective bargaining and at the funding of this flexicurity, without focusing on any particular model.

2. General comments

2.1 The Committee notes with interest the initiative the Commission has taken in launching a discussion on the way in which labour law meets the objectives of the Lisbon Strategy, which combine the quest for sustainable growth with that for more, but also better, jobs, aside from social cohesion and sustainable development. However, it condemns the tight timescale under which this consultation is being carried out and the fact that a whole lot of preparatory work is lacking.

2.2 The Kok Report (November 2003) suggested "Promot[ing] flexibility combined with security in the labour market by focusing on improving work organisation and the attractiveness – for employers and employees – of both standard and non-standard labour contracts to avoid the emergence of two-tier labour markets. The concept of job security should be modernised and broadened with a view not only to covering employment protection but also to building on people's ability to remain and progress in work. It is important to maximise job creation and raise productivity by reducing obstacles to setting up new businesses and by promoting better anticipation and management of restructuring."

2.3 It is useful to recall all these various ingredients of the Task Force's conclusions that were adopted by the Council, as they give a more complete picture of the labour market reforms intended to respond to the revised Lisbon Strategy than does the Commission's Green Paper, which focuses on limited points relating to individual labour law. The fact is, the Green Paper only deals partly with the issues addressed by Kok, and does not consider the issue of the 'more secure environment' proposed by the Social Agenda.

2.4 A simplistic approach would risk causing a loss of confidence among the European public, which is already increasingly sceptical towards the Social Agenda. The Commission suggests that it is appropriate to consider the revision of the degree of flexibility provided for in

standard contracts (permanent, full-time contracts) as regards notice periods, the costs and procedures for individual or collective dismissals, and the definition of unfair dismissal. These things have historically formed the cornerstone of workers' job security.

2.5 The Committee is concerned about the implication that labour law is currently incompatible with the revised Lisbon Strategy in that it is an obstacle to employment, and that, as things stand, this labour law is not capable of ensuring that businesses and workers have a sufficient degree of adaptability.

2.6 The Committee notes that the strategy set in 2000 has not achieved all its aims. However, it considers that caution should be exercised when analysing the causes of this situation and that an exclusive focus on labour law should be avoided. The revised Lisbon strategy must aim to make Europe more competitive, but also be capable of returning to full employment in a society that is better focused on ensuring a balance between people's work and family lives, better adapted to the career choices they make, investing in people and combating social exclusion. The modernisation of labour law is only one instrument among others to achieve these objectives.

2.7 Therefore, before expressing a view on what direction any undertaking to modernise labour law in Europe should take, the Committee proposes to try to put into perspective a number of comments or initiatives that have come from the Commission itself, such as the report it requested from Professor Supiot, which receives too little mention in this context, or, for example, the conclusions of the EPSCO Council of 30.11.2006 and 1.12.2006 on *Decent work for all*. The aim of the Supiot report was to carry out a wide-ranging, constructive investigation into the future of employment and labour law in an intercultural, inter-disciplinary Community framework; however, the Green Paper does not appear to have drawn on this report sufficiently.

2.8 What conclusions can be drawn from publicly-available statistics on the performance of the protective framework of labour law whilst keeping in mind the objective of 'more and better jobs'?

2.9 The Supiot group's final report raised a number of topics that cover the right questions relating to developments in labour relations, i.e. the globalisation of competition and economic activities, the impact of consumers' habits and attitudes, the liberalisation of markets, technological changes, the fact that workers themselves are changing in that they are better educated and skilled, more autonomous and more mobile, more individualistic, not forgetting new business practices in terms of human resource management, remuneration of workers, and requirements for multiple skills or flexibility of working time. The Supiot report touched on the issue of flexibility and security, and also on the very important matter of transitions between jobs, announcing the "abandon[ment] of the linear career model".

2.10 Among the many specific democratic requirements that social law has brought into the socio-economic field, the Supiot group paid attention to four points that lose none of their relevance in the debate opened by the Green Paper[1]:

These are:

- the requirement for equality, with the issue of gender equality and more generally of non-discrimination, remains relevant, as it is from this perspective that one can better understand how to solve the problems of insecurity and of a two-speed labour market;

- the requirement for freedom, which requires that workers be protected from dependency, is still a solution to the issues of disguised employment relationships, bogus self-employment and undeclared work;

- the requirement for individual security is still an answer to the increase in social uncertainty in its broadest sense felt by workers and recipients of social benefits;

- collective rights that become reality through workers' input into the meaning of work, its purpose, and economic development.

2.11 The Committee considers that the Commission should draw inspiration from previous requirements when framing the debate about modernising labour law and about the protection normally structured around an employment contract, such as health and safety, occupational accidents, arrangements for working time, paid leave, etc.

2.12 The Green Paper highlights the gulf that exists in most countries between the existing legal and contractual framework and the current realities of the world of work that have come into being in a relatively brief period since the late 1980s/early 1990s. However, at no point is the historical protective and emancipating role of labour law in the broad sense, including that resulting from collective bargaining, with its specificities connected to the cultural, social, economic and legal approaches of the various Member States, mentioned.

2.13 Maintaining a reasonable balance between the parties is not just the job of labour law, but also of social dialogue.

2.14 Any argument that considers protective labour law as an obstacle to growth and employment would be a simplistic vision in which labour law would be reduced to being merely a labour market policy tool or an economic variable.

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1 Beyond Employment: Changes in Work and the Future of Labour Law in Europe, Oxford University Press, 2001.

2.15 Given that an employee is always in a relationship of dependence with his employer, the fundamental protective and emancipating role of labour law must be reaffirmed. Its enforcement should be better guaranteed to avoid pressure on workers and to take into account the new challenges of globalisation and demographic ageing. In this area, there is certainly a role for the European Union vis-à-vis its Member States.

2.16 In 2000, the Commission launched an initiative which aimed to launch discussions about the need to assess the key components of the legal system and collective agreements with a view to ensuring that they allowed for modern organisation **but also** for improvements in employment relationships.

2.17 This improvement initiative was discontinued, despite the fact that it would seem obvious that it should have been carried through so as to achieve the aim of modernising and improving working conditions, a theme that was taken up years later by the current Commission, from a different angle.

2.18 The Committee must point out a number of significant deficiencies, which significantly undermine the reasoning and perspectives advanced by the Green Paper. It would therefore like to highlight a number of points that it regrets have not been looked at in greater depth or emphasised:

- the aim of strong economic growth is not incompatible with the social dimension of European integration and its development;
- labour law consists not only of individual employment contracts but also of collective labour law;
- the concept of decent work exemplified by the commitments to EU-ILO (International Labour Organisation) cooperation and the positive efforts made by EU Member States and candidate countries in June 2006 when ILO Recommendation 198 on employment relationships, which puts forward sound definitions and operational principles aimed at removing the uncertainties regarding the existence of an employment relationship and thus ensuring fair competition and proper protection for workers in an employment relationship, was adopted, should not remain empty words[2];
- the social partners, both at national and at European level, have already, through their collective agreements, helped to make new kinds of contract, including non-standard ones, more secure, thus demonstrating their ability to adjust employment relationships to new circumstances and to provide for forms of flexibility backed up by appropriate guarantees;
- social dialogue is a means of co-regulation, which should therefore be strengthened and made more effective so that it provides a better framework for flexibility in employment contracts;

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2 The employers' group did not support the adoption of the ILO Recommendation 198 on the employment relationship.

- job security is a prerequisite for improving productivity, as insecurity does not create new jobs. Mobility and flexibility can provide productivity gains and greater security, but any changes in labour law must not be made in such a way as to give rise to an increase in the working poor;
- the answer is not to be found in an argument that sets worker against worker and leaves them with the responsibility for finding a solution to unemployment and the skills gap;
- the new standard type of contract proposed in order to respond to the alleged conflict between "insider" and "outsider" workers must not leave workers to sort out how to put an end to the two-speed labour market; moreover, this contract, were it to come into existence, would not remove the real obstacles to job creation.

2.19 The Committee believes that the time has come to undertake a comprehensive, rigorous analysis, based primarily:

- on an assessment of the legal systems in the Member States as regards protection, their aims, the access to judicial and non-judicial conflict resolution bodies and procedures;
- on the contribution of social dialogue to modernising and improving labour law, decent work, and combating undeclared work and to the issue of the operation of the labour market and the organisation of work in businesses at appropriate levels (European, national, regional, businesses and groups, and also across borders, as is appropriate to each case);
- on consideration of public services and of the active role that efficient, high-quality public services play in employment and growth;
- on consideration of corporate governance, worker participation, and the mechanisms for monitoring and for alerting worker representative bodies (in particular on works councils) in adapting to change and faced with restructuring;
- on the recognised role of genuinely self-employed workers, whose role is key to promoting entrepreneurship and the creation of SMEs, not least in the social economy, and the establishment of appropriate protection for economically dependent workers, taking into account the specific situation of certain self-employed workers (e.g. direct sales workers);
- on promoting ILO Recommendation 198 (2006) on the employment relationship;
- on the impact of undeclared work, using the instruments for combating this practice via better coordination at European level of the competent authorities: a social Europol?
- on the impact of migratory flows, which need to be better coordinated;
- on win-win situations, i.e. making good use of flexibility in relation to the needs of businesses and to the needs and wants of workers, who can thus take back control of their lives;
- on the debate and the initiatives relating to basic and lifelong education and training, for example of workers, whether they are working, threatened by restructuring, re-entering the labour market after career breaks taken for personal reasons, and on secure careers, instead of banking on certain proposals for a hypothetical "single contract".

2.20 The German presidency's agenda, the reappearance of the quality of work at the informal meeting of employment and social affairs ministers in January 2007, and the recent letter from nine employment ministers entitled "Enhancing Social Europe", the annex to which contained, in particular, proposals for employment and flexicurity policies, have opened the way for the in-depth analysis the Committee wants and for the relaunch of the social component of European integration.

3. Specific comments: responses to or comments on the questions asked by the European Commission

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

3.1.1 Labour law has lost none of its validity as a law that protects both employees and employers; it gives the former an equitable basis for establishing a legally worded employment contract, balancing rights and obligations, taking account of the employers' powers of management and command to which they are subjected; it gives the latter very valuable legal certainty in that the various types of standard contracts are clearly established and their key clauses are fixed or given a framework, including for cases of termination by one side; moreover, in terms of civil liability, for example, labour law also provides workers and employers with guarantees and legal certainty in terms of compensation for and recognition of any incapacity suffered by the employee and of limitation of the employer's non-fault civil liability if safety standards were observed; collective bargaining and consultative institutions contribute to good industrial relations and, if necessary, to the search for appropriate ways of resolving differences.

3.1.2 In terms of changes that are desirable as a matter of priority, it would be appropriate that, with due respect to the laws and practices specific to each Member State, labour law regulates the new flexible forms of contracts that are developing so as to continue, under new conditions, its role of protection and of balancing the working relationship, as well as of ensuring legal certainty for the parties in the event of justified dismissal or of occupational accident or illness; moreover, modern labour law should enable employees to establish rights regarding their career throughout their working lives so that they can alternate lifelong learning, various types of contracts which may at various times meet individual needs regarding work-life balance, promotion or retraining, etc. and enabling employers to achieve long term benefits from the work of satisfied employees.

3.1.3 Labour law reforms must support positive actions in the interest of those most excluded from the labour market. Without creating precarious employment, such reforms must therefore also be instrumental in finding pathways into the labour market, including supporting access to lifelong learning and social economy initiatives providing employment integration.

3.1.4 It would also be appropriate to provide for better regulation of three-way employment relationships in order to specify the rights and obligations of all parties, inter alia in terms of civil or criminal liability; the case of workers who are economically dependent on one principal employer, to whom they are de facto subordinated in terms of how they work, should also enjoy suitable protection, in particular regarding occupational accidents, occupational diseases and social welfare. Any changes to the rules governing this area need, however, to be made with great care, taking into account the specific situation of various economically dependent groups of self-employed workers (e.g. those working in direct sales), to ensure that they are not deprived of their source of income or the opportunity to carry on activities meeting their expectations.

3.1.5 In addition, the fight against undeclared work and the legal formalisation of employment relationships are essential; it would be desirable to step up employment inspections, both with this in mind and more generally so as to ensure the effectiveness of the applicable legal or contractual provisions.

3.1.6 ILO Recommendation 198 on the employment relationship, adopted by the International Labour Conference in June 2006, provides a solid underpinning for the Member States in adapting labour law to the technological, economic and social developments that have been making profound changes to production, services and world trade for over two decades[3].

3.2 **Can the adaptation of labour law and collective agreements contribute to improved flexibility and employment security and a reduction in labour market segmentation? yes/no**

3.2.1 Experience shows that without relevant regulation, an increase in flexible contracts increases the segmentation of the market and increases insecurity, for example in terms of lower incomes in the most common (part-time) contracts, which do not make it possible to meet basic needs satisfactorily, and in terms of less social welfare (thresholds of access to unemployment benefits, to a supplementary pension, to lifelong learning). The length of the working day should also be taken into account, because if part- or full-time work is spread out over the day, workers cannot in practice use the time when they are not working for the pursuit of their personal interests.

3.2.2 Experience also shows that the most common flexible contracts (fixed-term and part-time contracts) are often offered to people who would prefer a full-time job. While these contracts can be a good starting point for the further working life of young people and an excellent opportunity for reconciling work and family life, or work and study, they are not always voluntarily chosen. Older workers have difficulty finding jobs, even temporary ones. The fragmentation of the market is not the workers' fault; it results from choices made by

3 The employers' group did not support the adoption of the ILO Recommendation 198 on the employment relationship.

employers who ultimately decide unilaterally what kind of contract they want to offer. Labour law must seek to stop discrimination against young people, women and older workers in terms of access to the labour market and of pay.

3.2.3 If flexibility is to be a choice rather than a means of discrimination, providing greater security, giving workers the opportunity to organise their lives independently (young people on short-term contracts forced to live with their parents because housing is too expensive, one-parent families where the parent, not by choice, has a part-time contract, often leading him or her to join the ranks of the working poor), then sweeping reforms of labour law are needed in the direction set out in the answer to the first question, preferably by means of social, tripartite or bipartite dialogue depending on the country and at the appropriate level.

3.3 **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?**

3.3.1 The Committee cannot answer on behalf of the 27 Member States. However, it does have some specific comments to make; the best way to compete is to keep innovating or to play the quality card.

3.3.2 The real factors in productivity are the workers' skills and thus their training and experience, and the introduction of new technologies, which depends on investment in education and training and in research and development, both public and private (it is primarily the latter that is lacking in Europe).

3.3.3 Regulation (whether legal or contractual, as a framework for action on training by the social partners) must therefore be aimed at continuing education and training and adjusting to the introduction of new technologies at work or during people's careers, and be applied fairly to all categories of employees; businesses that seek to build and maintain skills will have to make joint efforts with the public authorities or relevant institutions. Business will get a competitive advantage in return and employees will benefit from increased employability; legislation can encourage the improvement of skills and qualifications by organising or facilitating funding, training structures, by specifying rights to and incentives for training (training leave, time accounts) throughout the career (through successive contracts and employers), according to the laws and practices in force or to be put in place, and collective bargaining[4].

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4 See OECD, PISA 2003 and PISA 2006 on the effectiveness of education systems; the Nordic European countries do very well, with Finland in first place.

3.3.4 Pooling of education and training efforts can be encouraged by legislation and local financing for SMEs, for example, in order to share the costs over a geographical area, given that very small businesses and the self-employed cannot themselves organise and finance training of any duration, apart from the acquisition of on-the-job experience.

3.3.5 Labour law in the broad sense can, however, deal only with a limited part (lifelong learning, involvement of workers) of the factors needed to deal with new technologies and to adapt to industrial and social changes; higher education, research, venture capital, start-up incubators and innovation poles also have their role to play as part of a competitive and coordinated industrial policy at regional, national and European level.

3.4 **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?**

3.4.1 It is difficult to accept such an approach if flexibility means more, less secure job types. According to the definition, flexicurity provides the opportunity to combine different forms of labour market flexibility with security, in order to provide a balanced approach to enhancing workers' and firms' ability to adapt, while protecting them from risk. Consequently, flexicurity is more than just a balance between external flexibility and social security systems. The more flexible the contract is, the less job security one has, and the stronger the protection needs to be (social protection, secure careers or security of employment throughout the career)[5].

3.4.2 The question implies that flexibility creates jobs; there is no demonstration nor evidence to back up this assertion. Security has more to do with social legislation, which is not covered by the Green Paper.

3.5 **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?**

3.5.1 Truly well-designed support for the unemployed must, in any event and whatever the level of employment "protection", include worthwhile training or credible retraining. Moreover, it means tailored support for enterprises which are ready to employ people at the margins of the labour market (long-term unemployed, etc). An "active labour market policy" does not mean

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5 In this context, it is important to recall that 78% of work contracts in Europe are full time and permanent, and that 18.4% of workers are part-time, also with permanent contracts. Fixed-term contracts account for around 14.5 % of the workforce in the EU and temporary work for 2% of employment across the EU27. Nonetheless, over 60% of new work contracts are flexible.

compulsory acceptance of any job that is offered, even a less skilled or less well-paid one, on pain of complete loss of benefits.

3.5.2 Solutions vary from country to country depending on history, the role of collective bargaining, and the social situation. Subsidiarity has an important role to play in the area of labour law, including in the implementation of European directives, whether they are the result of a European framework agreement or an EU initiative. To be sure, the Community level must also take its responsibilities, encourage negotiation, submit concrete proposals within its areas of competence, and must not confuse "better legislation" with "deregulation".

3.6 **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?**

3.6.1 It is essential to have solid and sustainable standards to provide for lifelong learning and transitions between jobs; the relative importance of legislation and collective agreements will vary according to the models that exist in countries where legislative and social conditions, the strength of representative organisations, and traditions and customs differ, depending on the social history and the means of ensuring that compromises accepted by the social partners are kept to for the very long term. This brings us back to the creation of genuine statutory protection of employees.

3.6.2 The system that needs to be set up involves employment contracts and needs to be implemented in institutions that provide support for transitions, financial support (the forms of financing to be negotiated or discussed) and public, collective or cooperative training establishments, or on-the-job training (learning company) with recognition of the qualifications thus acquired.

3.6.3 It is in this area that labour law could make an effective contribution to the Lisbon objectives, both in the area of the knowledge society and in that of security that enables people to organise their lives and plan for the future, which in turn makes a direct contribution to productivity and the quality of work.

3.7 **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?**

3.7.1 To be sure, a debate could be held on this matter, on the basis of sufficiently in-depth comparative studies, but this question seems largely theoretical, to the extent that the harmonisation of labour law or of social protection are not on the agenda; the national definitions and the corresponding case law are working, and it would seem more appropriate to leave them in place, as there is a clear distinction between labour law and civil (commercial) law.

3.8 **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?**

3.8.1 This all depends on what is included in this "floor of rights dealing with […] working conditions". If we are talking about such things as working time, flexible working, and pay, these are determined by the type of contract and the legally applicable general conditions.

3.8.2 If we are talking about rights of participation, fundamental freedoms, the principle of equality and non-discrimination, the right to protection against the unforeseen – accidents, sickness, unemployment, etc. – these are obviously independent of the employment contract; they are fundamental rights. It would be completely unacceptable to propose that they be described as "minimum requirements" or to envisage their "flexibility".

3.9 **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"?**

3.9.1 Labour law is based on public social policy, which is binding on all parties. Principals must have some power to monitor or supervise their sub-contractors and must take the precaution of enshrining certain principles (compliance with applicable social and technical standards) in contracts, if they do not want to be unwilling accomplices to violations of labour law or other national standards applicable to building sites or workplaces.

3.9.2 Joint responsibility, with provision for principals to take action against defaulting sub-contractors, seems to be the solution that would best protect the rights of workers, who may find it very difficult to defend themselves if the headquarters of the sub-contractor is in another country, possibly outside the EU, while they are working on a building site managed by the principal. This rule establishing joint responsibility for working conditions and for guaranteeing the payment of salaries should apply whether the principal is a private or public entity or a mixture of the two.

3.9.3 The protection of employees working abroad must be improved. Non-national sub-contractors should make contributions to funds or institutions that guarantee the payment of money owed to employees if the employer becomes insolvent; legal provision should also be made in the Member States for compensation for possible repatriation to be included among the principal's obligations in the event of its sub-contractor becoming insolvent.

3.9.4 One of the problems of three-or-more-way employment relationships lies in the increased risk, for employees/workers, of failure of one of the links in the chain and of dilution of

responsibilities. In the case of non-national sub-contractors' employees, only joint responsibility between the principal on the one hand and any and all of its sub-contractors on the other, supported by the legal rules, provides protection that is sufficiently complete to ensure that rights are respected and wages and social security contributions are paid. Appropriate national guarantee systems, based on the directive on the protection of employees in the event of the insolvency of their employer, should be sufficiently effective and even extended to companies in other countries if their national guarantee system is insufficient or non-existent, in which case the joint responsibility of principals would be proportionately reduced. In addition, national legal systems must provide for a mechanism to allow the use of a proportion of payments from principals to foreign sub-contractors to contribute to a mechanism guaranteeing the latter's outstanding financial obligations towards their employees in the event of their employer becoming insolvent[6].

3.10 **Is there a need to clarify the employment status of temporary agency workers?**

3.10.1 The absence of a Community legal framework is creating the risk of abuses such as evading legislation on temporary secondment. It would be useful to look actively for a consensus in the Council, which would enable regulation of the activities of temporary worker agencies at European level.

3.11 **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?**

3.11.1 The 1993 directive that is currently in force, subject to the inclusion of case law established by the Court, offers a protective framework that can be improved, complemented or developed at national level as necessary, inter alia through collective bargaining at various levels.

3.11.2 The question implicitly recognises the link between the duration/length of working time and the risks of accidents or detriment to health; there is indeed such a link, and reducing actual working time could, over a longer period, improve workers' health, mainly by reducing stress and permanent fatigue¸ and at the same time also facilitate the creation of new jobs.

3.12 **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**

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6 See Council Directive 80/987/EEC of 20 October 1980 on the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.1980, p. 23).

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?

3.12.1 See answer to question 1 and ILO recommendation 198; due to current variations, the definition should remain within the competence of the Member States, as it affects not only employment contracts, but the application of social legislation (definition of beneficiaries, conditions for accessing benefits).

3.12.2 There does not seem to be any real problem caused by European directives, which define the persons concerned according to the nature of the legislation; an in-depth study of this matter would certainly be necessary before any changes, if necessary, were considered.

3.13 **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?**

3.13.1 The role of the social partners is indispensable, in the context of social dialogue and in the spirit of the treaties and the Charter, in looking at the implementation of and compliance with Community labour law.

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

3.14.1 The role of Eurostat should be developed so that the phenomena operating in the various countries can be properly understood; it appears that the role of informal or undeclared work in forming national GDP is underestimated; if the causes of this are more attributable to specific national situations, as some studies indicate, then action by Member States themselves should be strongly supported and encouraged.

3.14.2 Nonetheless, since little is known about these phenomena, it would be useful to clarify the links between these types of work and counterfeiting, the significance of criminal networks in undeclared work and links with illegal immigration, which could justify greater judicial cooperation within the Union, and an increased role for the EU, insofar as these forms or work also have an impact on the internal market and competition.

3.14.3 The social partners have an important role to play in combating undeclared work and in reducing the informal economy. Action should be taken at EU level to encourage the social partners in Member States to launch national and sectoral projects among themselves and in cooperation with the authorities to resolve these problems. The social partners could work together at EU level to analyse and publicise good practices in Member States.

3.14.4 The fight against undeclared work calls for effective cross-border cooperation and surveillance by Member State authorities and dissemination of information on the sanctions arising from performing undeclared work or making use of undeclared work.

Brussels, 30 May 2007.

The President of the European Economic and Social Committee	The Secretary-General of the European Economic and Social Committee
Dimitris Dimitriadis	Patrick Venturini

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N.B. Appendix overleaf.

APPENDIX

to the opinion of the European Economic and Social Committee

The following amendments were rejected, although they did receive at least a quarter of the votes cast:

Replace the entire opinion by the following:

"Today Europe is facing important challenges like a changing economy from an industrial economy to a service oriented and knowledge based economy, globalisation, rapid technological progress, ageing of European population, decreasing birth rates and changes in society and its needs.

Responding to these challenges as well as maintaining our European social model requires - inter alia – a modernisation of labour law.

Therefore, the European Economic and Social Committee (EESC) welcomes the Commission's Green Paper that launches a public debate about the modernisation of labour law. Input to this Green Paper shall enrich the planned Commission's communication on flexicurity. The balance between employment flexibility and security should mutually satisfy the needs of workers as well as enterprises.

The modernisation of labour law should support the Lisbon strategy objectives of growth, competitiveness, more and better jobs as well as social inclusion. To achieve these objectives the EESC suggests the following:

1. *The existing variety of contractual forms of employment should be kept provided that a stable legal framework is in place, which takes the needs of workers as well as the needs of enterprises, especially SMEs, into account. 78% of employment contracts are on a permanent and full time basis, however, the number of new flexible contract arrangements is rising across Europe. Flexible work contracts such as part-time and fixed-term contracts can help develop work skills that are not learnt in a classroom environment, increasing the likelihood of finding a full-time permanent contract. Flexible work contracts can be a good starting point for the further working life of young people as well as an excellent opportunity for reconciling work and family life and can therefore contribute to the creation of an inclusive labour market. The protection against discrimination is important for these workers as established in European directives regarding part-time work and fixed term work which are based on European social partner agreements.*

2. *The modernisation of labour law needs to take place mainly at the level of the Member States. As labour law is just one part of the flexicurity-principle the right balance between flexibility and security needs to be defined within the respective national framework. National reforms should be complemented by European action targeted at raising awareness through identifying and facilitating exchange of best practices.*

3. *The important role of social partners at national, sectoral and enterprise level for modernising labour law as well as for finding the balance between flexibility and security has to be supported. The collective bargaining has to be based on the principle of the autonomy of the social partners and will vary according to the history and culture of industrial relations in the different Member States.*

4. *A more flexible employment protection within indefinite labour contracts should be combined with active labour market policies providing tailored support for employees upgrading their qualifications according to the labour market needs. The focus should be on employment security rather than on the protection of particular jobs. Positive actions by social economy and enterprises should be supported to integrate the most excluded in the labour market. A close tripartite partnership between employers, workers and the public sector helps to identify training needs and to share the financial burden. Employment-friendly social protection schemes for workers as well as for the self-employed should contribute to facilitate transitions between different forms of work.*

5. *Self-employment highly contributes to entrepreneurial spirit, an area where Europe is lagging behind compared to its main competitors in the world and is the best sign of the dynamism of a modern economy. Economically dependent self-employment, however, has to be clearly distinguished from bogus self-employment: bogus self-employed should have the same level of protection as employees as regards e.g. social security, safety and health and job protection.*

6. *Undeclared work distorts competition and destroys the financial basis of the national social security schemes and the tax systems. 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, consistent wage policies, fiscal incentives, improvement of public infrastructure and public services but also controls and dissuasive sanctions. The European Commission should therefore take the lead in order to gather good practices and facilitate its dissemination among the Member States in order to stimulate action against undeclared work."*

Reason

To be given orally.

Voting

For: 89
Against: 126
Abstentions: 7

New point 3.9.2

Add new point:

> *"In general terms principals do not have any influence on how contractors comply with their obligations to employees on a daily basis, and in addition they are neither aware of nor able to influence contractors' financial situation; they are not therefore in a position to gauge whether contractors are able to meet their obligations to employees. They are not therefore able to assume the accompanying financial risk."*

Reason

The Commission's question in the Green Paper is general and does not only apply to transnational relations. Therefore I propose to insert an additional point of general nature between 3.9.1 and 3.9.2. In this case, point 3.9.2, which describes in detail the exemption from this general statement (transnational relations) would be OK.

Voting

For: 75
Against: 122
Abstentions: 12