

LGE RESPONSE TO EU COMMISSION

GREEN PAPER - COM(2006) 708

Modernising labour law to meet the challenges of the 21st century

1. Local Government Employers (LGE) represents about 410 local authorities in England and Wales. Collectively, these authorities employ about 2.4 million people. This substantial workforce (over 1% of total employment in the EU and about 9% of the UK workforce) has some special characteristics:
 - 70% of our employees are female
 - over a third of our staff work part-time
 - average educational qualifications in local government are higher than in the national workforce
 - our age profile is older than that for the whole economy.
2. We are good employers. We invest more in staff training than the UK average. Our lowest pay rates are above the UK national minimum wage, itself the second highest in the EU. We provide generous pensions, based on final salaries. We have pioneered flexible working both to suit the needs of working mothers and to provide more convenient services to the public. Pay and terms and conditions continue, against the UK trend in the private sector, to be based on social dialogue, at both national and local level.
3. We are labour-intensive employers and therefore labour law, and the related fields of equalities and health and safety law, are of profound importance to us. Our primary role is to provide high-quality services to the public. To do this we must have a high-quality workforce, well-motivated and well-managed. In such labour-intensive services that are funded by the taxpayer, there is always a point of balance to be found between the interests of the public we serve and those of the staff we employ. The public as a matter of principle come first, but we must be good employers towards our staff in order to guarantee a good quality of service to the public.
4. During the EU's first 50 years, developments originating both at EU level and in the member states have brought about very substantial improvements in the quality of

working life. Compared with 50 years ago, working time is shorter, holidays are longer, investment in education and training is higher, accident levels are lower and real wages are much higher. Our collective tolerance of inequity or unfairness in the workplace is lower than it used to be and employees have more avenues through which to complain and seek redress if they consider that they have been unfairly treated.

5. Many people consider that these trends are natural, if not overdue, and need not be questioned. Others however, worry that Europe's high social standards may ultimately be jeopardising our collective economic competitiveness in an irreversibly globalised world.
6. LGE belongs to the UK section of CEEP, which has been taking an active part in formulating CEEP's overall response to the Green Paper. Our colleagues in NARE (the National Association of Regional Employers) also belong to CEEP and both our organisations support that response, in particular the key points on the first page, repeated here for convenience:
 - CEEP **welcomes** the opportunity given by the Green Paper to review the European labour law framework from first principles
 - CEEP **emphasises** that labour law is just part of a range of legal and policy measures designed to ensure a good balance between *labour market efficiency* and *fairness to workers*
 - CEEP **advises** that, because of the complexity of national employment and social protection systems, one-size-fits-all solutions are often counter-productive. Therefore more emphasis needs to be given to allowing sufficient flexibility in EU rules for national social partners and governments to adjust the detailed application of general European principles to fit their own circumstances and without fear of being overridden on points of detail by the European Court of Justice
 - CEEP **considers** that the emphasis of the Green Paper is disproportionately placed on the perceived negative impact of the use of non-standard employment relationships. We would have welcomed more discussion on the areas of regulation and policy making where greater convergence or joint action would improve the operation of the labour market, for example in relation to enhancing mobility
 - CEEP **requests** that any new employment legislation is introduced at European level only after there first having been a rigorous and independently conducted assessment of all the likely impacts
 - CEEP **recommends** that the Commission continues to invest in comprehensive research into the impact of labour law on employment levels, productivity and competitiveness at three levels: EU law; national implementation of EU law; and national law.
7. While supporting CEEP's response to the Green Paper, we would like at the same time to record our concerns about the combined effect of EU law, national implementation and the impact of the European Court of Justice in the related fields of employment law,

equalities law and health and safety law. The intentions behind each of these pieces of law are, with few exceptions, if any, impossible to disagree with. But has the implementation sometimes had a disproportionate effect on, in our case, the provision of good public services, at a price that taxpayers are willing to pay? Two examples from our own experience may help to illustrate this.

8. In relation to equal pay for different jobs assessed to be of equal value, we have encountered huge problems, resulting in large increases to our paybills with retrospective effects of, normally, up to six years, following UK judgments in the light of guidance by the ECJ on the principle of equivalence. In some local authorities, the large costs involved (totalling additions of billions of pounds to our annual paybill) are now having a detrimental effect on the quality of services. One can legitimately ask whether this result is proportionate to the original intention of the legislators. LGE are emphatically not contesting the principle that men and women should be paid the same for the same work under the same conditions. Our difficulty is in relation to extending this principle to comparisons between men and women doing very different work that is assessed to be of equal value, where they are subject to different labour markets. Here we are facing issues of occupational segregation in the labour market, which have deep cultural roots.
9. Similarly, the understandable principle that employees' terms and conditions should be protected on transfer to another undertaking (the Acquired Rights Directive) sits somewhat uneasily with the equalities legislation, if it means - as our courts have ruled - that the new employer, after a restructuring, is unable to harmonise pay and conditions for a workforce whose terms and conditions originate from several, different previous organisations, except at disproportionate cost.
10. It is our very difficult experiences with issues such as these which lead us to question whether the Green Paper, with its focus on flexicurity and undeclared work, has been sufficiently wide-ranging and radical. We would like to see an independent analysis and review, funded and facilitated by the EU, of all aspects of regulation affecting the labour market. This review would look at each piece of EU labour/equalities/health and safety law and consider, first, its contribution or otherwise to the overarching Lisbon objective of "more and better jobs"; second, whether the detail of the regulation is proportionate; and, third, whether the underlying principle could be guaranteed in a different, more employment-friendly, way.
11. In addition to being involved in CEEP, LGE also takes part, through CEMR, in the European social dialogue for local government. We are aware that CEMR and their trade union counterpart, EPSU, are looking together at the possibility of a joint response to the Green Paper. We believe that such a joint response may focus on the point that regulation is not always necessary if the social partners can agree on the way forward. We certainly accept that the outputs from social dialogue are usually more practical, more flexible and better informed about the realities of working life than more general regulation or law is able to be. Returning to the example of equal pay in paragraph 8

above, it is unfortunately clear that, in our own situation, a combination of circumstances has made it very difficult to conduct a proper social dialogue and reach negotiated agreements that ensure equal pay is properly achieved.

12. In conclusion, both LGE and NARE support the CEEP position on the Green Paper, but at the same time would like the Commission to launch a more ambitious exercise as proposed in paragraph 10 above. We would be delighted to have the opportunity to come to Brussels to explain our views in more detail and to describe our experiences with some aspects of EU labour law. Our contact person is Joan Seaton (joan.seaton@lge.gov.uk).

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