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Green Paper on Labour Law
DG EMPL/F/2
J-37 05/26
European Commission
B-1049
Brussels
Belgium

16th March 2007

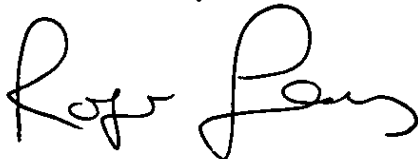
Dear Sir

EC Green Paper - Modernising Labour Law

I am pleased to enclose a copy of the Amicus response to the above consultation document for your consideration. Should you have any points of clarification or require further explanation of the points raised in the response please do not hesitate to contact me.

A copy of this response has also been emailed to you today.

Yours sincerely



Roger Jeary
Director of Research



INVESTOR IN PEOPLE

General Secretary
Derek Simpson



To:
Green Paper on Labour Law
DG EMPL/F/2
J-37 05/26
European Commission
B-1049 Brussels
Belgium

March 2007

Amicus Response on EC Green paper "Modernising Labour Law – to meet the challenges of the 21st century"

Introduction

Amicus is the UK's second largest trade union, with a greater number of members in the private sector than any other union and it is the fastest growing in the public sector. Now with 1.2 million members, Amicus has members in a range of industries including financial services, manufacturing, print, media, the voluntary and not for profit sectors, local government and NHS health professionals. We are now on track to merge with the Transport and General Workers Union – to create a union of some 2 million members.

Amicus is affiliated to the British TUC and additionally is affiliated to the following European Trade Union Secretariats:

**European Mine, Chemical and Energy Federation
European Transport Workers Federation
European Federation of Trade Unions in the Food, Agriculture and Tourism Sectors
European Federation of Public Service Unions
European Metal Workers Federation
European Federation of Building and Woodworkers
Union Network Europa**

Executive Summary

- a) **Amicus believes that the best way to modernise EU labour law to meet the challenges of the 21st century (both in terms of globalisation and advances in technology) is to encourage and strengthen collective bargaining, without diminishing job security or contractual rights.**

- b) We reject the assumptions underlying much of the green paper, and the implied meaning of 'flexicurity', that either the economy, or vulnerable workers such as women and migrant workers, would benefit from weakened laws on unfair dismissal and contractual rights. We provide evidence in support of this contention in paras 3.1 - 3.6, pages 6/7 of this submission.
- c) On the contrary, we see a potential downward spiral on the training and skills that we need to secure our competitive advantage, if there is a failure to introduce sound universal labour standards, applicable both throughout the EU, and applicable to the manufacture of imports in to the EU.
- d) A levelling up of universal workplace standards will help facilitate the aging population contribute to the economy for longer than a 'free market – race to the bottom' approach.
- e) We also believe that enhancement of the role of trade unions can advance flexibility, without detracting from security and fundamental human rights, including the right of effective freedom of association.
- f) Amicus is concerned about a number of flawed presumptions in the Green Paper and we will debunk the myths that:
- reduced labour security improves productivity (see page 20)
 - women and disadvantaged job-seekers necessarily benefit from flexible forms¹ of employment (see page 6)
 - new laws and better security must involve "red tape" harmful to legitimate business (see pages 7/8)
 - the labour law framework in the UK is conducive to growth and full employment. (see pages 5/6)
- g) In fact the evidence shows that:
- effective rights promote efficiency
 - collective agreements can achieve flexibility. (see pages 4/5)
- h) Training and innovation are key to the UK's competitive advantage in the world economy, and both are best served by secure work places where the workers have a voice to contribute ideas and both employer and employee have the incentive to invest in training.
- i) In 2002, the Managing Director for Human Development at the World Bank, Zafiris Tzannatos, produced "Unions and Collective Bargaining - Economic Effects in a Global Environment"². This was an in depth

¹ Flexibility in the work place can mean fundamentally different things; some of which assist working parents and others which make work even more impossible for them.

² Co-written with Toke Aidt of Cambridge University - ISBN 0-8213-5080-3 - <http://www-wds.worldbank.org/external/default/main?pagePK=64193027&piPK=64187937&theSitePK=523>

report that reviewed more than a thousand studies on the effects of unions and collective bargaining. It found that **co-ordinated collective bargaining tended to be associated with lower and less persistent unemployment, lower earnings inequality, and fewer and shorter strikes.**

- j) In Brussels, on 13 December 2006, World Bank President Paul Wolfowitz announced that the Bank has now taken a decision that all infrastructure projects funded by it in future would have to fully respect the core labour standards of the International Labour Organisation (ILO).
- k) This approach by the World Bank is based on sound economics, and the fact that there is no evidence to show that stronger employment protection rights and greater collective bargaining will have an adverse impact on economies or states.
- l) Unions have a vital role to play and must responsibly step up to the mark. Legitimate businesses should not fear unions (who have an interest in their survival and success where they employ our members). Instead they should fear the damage caused by illegitimate and irresponsible businesses.
- m) Education and training are vital. The UK economy is still struggling to recover from the decimation in business investment in training during the last Conservative governments.
- n) Unions have a key role to play in promoting education and training. Our workplace representatives can help employers invest in education and training. We also directly provide much training, both through the Union Learning Fund projects, and other initiatives and bodies
- o) Unions have another key role to assist various state regulators and thus increase their effectiveness notwithstanding their level of resourcing by the State (see Introductory Comments, Section 7, page 11.)

Introductory Comments

1. Labour rights, collective bargaining and efficiency

- 1.1. The evidence supports the fact that better labour security and rights encourage efficiency. People will resist change more without security. We recognise and understand the difference between functional flexibility (change of an activity by a worker for an employer) and numerical flexibility (the ease by which a business can rid itself of workers and take them on).
- 1.2. In September 2005, Dr. Werner Stiftung noted that "An ILO study found that Denmark and the other Nordic countries have effectively implemented nearly all ILS and that their economic and social performance is superior to all other countries. They rank at the top or near the top among the industrialised countries on virtually any social and economic indicator. They have the highest level of collective organisation (trade unions, employers, and collective bargaining coverage), sound industrial relations and social dialogue, the highest minimum wages relative to average wages, the least wage and income inequality, the highest level of income protection, and the largest amount of spending on active labour market policy."³
- 1.3. The Green Paper states "Collective agreements no longer play a merely auxiliary role in complementing working conditions already defined by law. They serve as important tools adjusting legal principles to specific economic situations and to the particular circumstances of specific sectors."
- 1.4. Amicus can provide evidence, for example in the construction sector, to show how collective agreements can facilitate flexibility. They are more responsive than the law to any need to respond to changing circumstances. This is consistent with the findings of the World Bank research.
- 1.5. Central to the Amicus role in the UK construction industry is our ongoing support for national collective agreements, not only for their role in maintaining terms & conditions for our membership but also because we believe they provide stability for an industry otherwise characterised by instability, a highly mobile workforce and poor industrial relations.

³ **Globalization and Social Progress: The Role and Impact of International Labour Standards** Dr. Werner Sengenberger Friedrich Ebert Stiftung, 2nd revised and extended revision, Bonn, September 2005, ISBN 3-89892-406-8 - http://www.fes-geneva.org/publications/OccasionalPapersShortSummary/globalization_and_social_progres.htm

- 1.6. Our involvement in the referenced national collective agreements relates largely to our joint operation of a number of bodies as he follows:

NAECI National Agreement for the Engineering Construction Industry
JIB Joint Industry Board for the Electrical Contracting Industry
SJIB Scottish Joint Industry Board for the Electrical Contracting Industry
HVAC Heating, Ventilating, Air Conditioning, Piping and Domestic Engineering Industry National Agreement
JIB-PMES Joint Industry Board for Plumbing Mechanical Engineering Services
SNIJIB Scottish & Northern Ireland Joint Industry Board for the Plumbing Industry

- 1.7. When we consider the increasing expansion of the industry the ongoing industrial relations stability cannot be overlooked. It is not insignificant that, in the ten years to 2005 the number of working days lost due to 'stoppages' fell by 83%.⁴
- 1.8. Further we believe that collective agreements can provide the framework for developing the relationships between workers and employers that will facilitate ongoing improvements in productivity to the benefit of all stakeholders. This position has been supported by independent and objective research such as the Baker Mallett report.⁵

2. Flexibility and full employment

- 2.1. Another myth is based around "a few clearly unsatisfactory headline numbers (unemployment and growth) [that] have made it possible for the English speaking world, which increasingly sets the tone for all business and economic news coverage, to crow about the superiority of their "flexible" and "dynamic" model as opposed to the "rigid", "stagnant" and "declining" continental economies."⁶
- 2.2. The UK is often cited as a panacea with reduced labour protection promoting flexibility and growth. This is wrong. Research by Andrew Glyn & John Edmonds (among others) shows this. They wrote: "Taking these increases together it is clear that Mr Brown's public expenditure programme has been directly responsible for all the growth in UK employment since 2000"⁷

⁴ DTI Construction Statistics 2006

⁵ A Study of the Implementation of the Major Projects Agreement on the BAA Terminal 5 Project – 2005

⁶ Jerome a Paris - 30th June 2005 - <http://www.eurotrib.com/>

⁷ Andrew Glyn and John Edmonds, as reported in Financial Times 30 June 2005
<http://www.ft.com/cms/s/4d573266-e903-11d9-87ea-00000e2511c8.html>

2.3. The UK DTI commissioned paper in August 2006 "Labour Market Flexibility and Foreign Direct Investment"⁸ found that there is "potential for misdirection of policy...by focusing upon less significant aspects of labour market flexibilisation" and "many 'traditional' factors (labour cost, wage flexibility, incentive pay, trade unions activity) are weak influences upon foreign direct investment."

2.4. We also see this in the Work Foundation 2006 research paper entitled "Who's afraid of Labour Market Flexibility"⁹ which notes that the UK Treasury have recognised that a straightforward statement "strong employment laws bad: weak employment laws good" lacks a convincing empirical foundation."¹⁰

3. Flexible forms of employment do not benefit the disadvantaged

3.1. The Green Paper appears to suggest that less stringent employment practices could assist the women and other disadvantaged or vulnerable workers to transfer into the permanent job market. There is no evidence cited to support this contention.

3.2. In the UK, where we have some of the most flexible employment practices in Europe, evidence points to the most vulnerable workers continuing to find themselves in the temporary labour market with less favourable protection than those employed in the permanent labour market and frequently on lesser conditions¹¹.

3.3. Indeed "atypical" forms of employment, including agency work, are being exploited by a number of businesses, whose eye is on the short term and with no eye for the good of the economies of Europe, the member states or their citizens. Amicus is not against atypical forms of work – we are against the abuse of workers, who have no genuine choice or adequate representation and protection.

3.4. We believe that progressing the Agency Workers Directive would be a helpful way to assist vulnerable workers and help achieve the universal labour standards referred to in this paper.

3.5. It is disingenuous and misguided to suggest that employment protection should be weakened as a measure to assist with combating discrimination against women workers and others.

⁸ Labour Market Flexibility and Foreign Direct Investment page 34 - Dr. P. Whyman, Lancashire Business School & Dr. Mark Baimbridge, University of Bradford – August 2006 – DTI Employment Relations Occasional Paper - <http://www.dti.gov.uk/files/file33254.pdf>

⁹ The Work Foundation – "Who's Afraid of Labour Market Flexibility" 2006 - http://www.theworkfoundation.com/Assets/PDFs/labour_market%20flexibility.pdf

¹⁰ H M Treasury, *EMU and Labour Market Flexibility* (2003) - http://www.hm-treasury.gov.uk/documents/international_issues/the_euro/assessment/studies/euro_assess03_stud_worcestershire.cfm

¹¹ Quarterly Labour Force survey, September- November 2005 - from PSI Report "The Hidden One-in-Five" September 2006

3.6. We do support the contention that certain forms of flexible working (quite different from *flexicurity*) can assist workers, especially those with caring responsibilities or certain disabilities. However, workers need secure employment and contractual terms and effective trade union representation, in order to negotiate flexible working that helps them. For example: negotiation for flexibility of hours within an agreed framework to help plan child care has a positive effect for a working parent; whereas a complete 'flexible hours contract' where the employer can expect an employee to work longer or shorter, depending on the seasonal/production demands on the business, could well make it impossible for a working parent to continue in that workplace.

4. The Experience of the National Minimum Wage in the UK

4.1. It should be born in mind that the UK growth and increases in employment occurred against a backdrop of partial improvement in employment rights.

4.2. At its concept business, the Conservative Party and many economists were opposed to the National Minimum Wage, claiming that it would destroy jobs and reduce economic competitiveness. Many economists were predicting that it would cost 80,000 jobs over its first three years.¹²

4.3. In reality the NMW has had no significant effect on employment in most sectors. Neither has it had a significant effect across the board on productivity.

4.4. When it was first introduced in April 1999, the rate of the NMW was £3.60 per hour (£3.10 for 18 to 21-year-olds). At that time, 1.9 million people were believed to be paid less than that. It raised the pay of well over one million low paid workers by about 15% overnight at the point of introduction.

4.5. As of October 2006, the national minimum wage is £5.35 (£4.45). The rate for 16 to 17-year-olds is £3.30. Since 1999, the minimum wage has been increased by 30% after adjusting for increases in the retail price index, well above the increase in average earnings over this period.

4.6. Adair Turner, the Low Pay Commission Chairman, said in February 2003:

"The national minimum wage has brought benefits to over one million low-paid workers. It has done so without any significant adverse impact on business or employment."

¹² Melanie Lansbury, Business Strategies, economist – BBC Interview 28 March 1999

- 4.7. Currently approximately 1.3 million workers benefit from the NMW and as the Low Pay Commission put it in February 2003: "It has ceased to be a source of controversy and become an accepted part of our working life."
- 4.8. This led the Conservative Party to reverse their policy of abolishing the NMW in February 2000. This represents yet another example of the concerns of and on behalf of business being reactionary and unfounded.
- 4.9. Further, the National Minimum Wage legislation had a greater impact on women's pay, than even the Equal Pay legislation has over time. The Low Pay Commission Report 2005 stated "two-thirds of the beneficiaries of the October 2004 upratings were women. Nearly half were women working part-time. A fifth were full-time male workers and men, working part-time make up the remaining 12 per cent."
- 4.10. The DTI/Inland Revenue Women and Work Commission reports confirm this: "The minimum wage plays a part in narrowing the gender pay gap, as women are more likely to work in lower paid and often part-time jobs than men. It is estimated that around 70 per cent of the beneficiaries of the uprating of the national minimum wage in October 2005 were women."¹³
- 4.11. Thus the National Minimum Wage is arguably the most effective piece of legislation in decades, in improving the lives of vulnerable workers, especially women. This is an example where regulation and limits on flexibility (with regard to low pay) have helped such workers without detriment to the economy, contrary to the assumptions in the Green Paper preamble.

5. Education and unions

- 5.1. Skills and knowledge, and thus education and training, are key to numerical and functional flexibility. Business must play its part to reap the benefits.
- 5.2. Security of employment is an essential pre-requisite to increasing skills and knowledge via training. Employers have more incentive to train a workforce who they expect to employ for some time. Employees have more incentive to participate in training if they expect to benefit from it in the medium and long term in their current employment.
- 5.3. Collective bargaining by trade unions helps facilitate both training and flexibility. The potential for increased flexibility through collective bargaining would be increased by an improved legal framework for entrenching collectively agreed changes in individual contracts of

¹³ http://www.womenandequalityunit.gov.uk/publications/genpaygap_facts_aug06.doc

employment, and by strengthening the remedies available for individuals

5.4. Unions are keen to develop their role. The Government's aim in creating the Union Learning Fund in 1998 was to promote activity by trade unions in support of the objective of creating a learning society and it remains a key purpose of "Unionlearn", recently established by the TUC in the UK.

5.5. Unionlearn's purpose is to help unions open up a wide range of learning opportunities for their members and the Union Learning Fund will assist unions to promote learning to match learners' starting points and current needs and aspirations, and also linked to personal progression. It will work closely with unions to ensure that ULF projects help to mainstream and sustain learning activity in the long term.

5.6. Currently there are 13,000 union learning representatives who have been trained and by 2010 there should be 22,000 union learning reps (ULRs) in place and 250,000 learners going through union route.¹⁴

5.7. Amicus can cite evidence from Life Long Learning Projects, such as:

- Cummins Engine Company, Darlington where Amicus ULRs were instrumental in setting up workplace learning centre on site in 2004 funded by Learning & Skills Council; and
- Pirelli Tyres, Carlisle where Amicus has been involved in setting up a Learning Centre with funding from the Union Learning Fund. This has proven to be successful with benefits for workers and the company.

5.8. However, the inclusion of unions is not appreciated in all respects. In the Sector Skills Councils - established by government across 25 sectors with the role of identifying and developing strategy for deliverance of skills needs - trade union involvement on Boards is limited in most cases to one representative out of 12 to 15. The Leitch Report published in December 2006 sets out a strategy for government for delivering workplace skills over the next 10-15 years. Whilst many of his recommendations coincide with our own union policy and findings the report makes little reference to involvement of trade unions in the strategy.

5.9. Joint Training Limited (JTL) is another case in point. JTL was formed in 1990 by the Electrical Contractors' Association and Amicus to manage training in the electrical sector. Gaining charitable status in 2000, it grew significantly, expanding into plumbing and related areas. JTL is now the leading training provider to the building services

¹⁴ Working Together: Nextstep and Trade Unions, February 2005 – LSC/Nextstep/TUC

engineering sector. Supporting over 9,700 apprentices and 3,500 employers, JTL now delivers more apprenticeships in the sector than anyone else; indeed 75% of all electricians who qualify each year do so with our assistance.

- 5.10. Further improvements could be made with the simple expedient of having training and education as an issue covered by statutory recognition of trade unions, and allowing workers appropriate time off to discuss options with ULRs.

6. Sectoral Forums

- 6.1. Flexibility and the skills agenda are also facilitated by fora of employers and trade unions within sectors of the economy. Many such fora had existed for decades, however many, such as the Engineering Employer's Federation, have sacrificed the opportunities available, through the employers moving away from sectoral bargaining¹⁵.

- 6.2. The electrical contracting industry comprises a great number of private enterprise firms, ranging from firms employing one man to firms employing more than a thousand. During the 1950's and early 1960's, the Electrical Contracting Association (ECA) suffered poor relations with the Union to such an extent that strikes and lockouts became common place. It was during the early 1960's that the two parties recognised that the situation needed to be addressed. The 1966-69 Industrial Agreement, as well as providing for annual wage increases, also facilitated the setting up of the Joint Industry Board to replace the existing National and Area Joint Industrial Councils:

"The principal objects of the Joint Industry Board are to regulate the relations between employers and employees engaged in the industry and to provide all kinds of benefits for persons concerned with the industry in such ways as the Joint Industry Board may think fit, for the purpose of stimulating and furthering the improvement and progress of the industry for the mutual advantage of the employers and employees engaged therein, and, in particular, for the purpose aforesaid and in the public interest, to regulate and control employment and productive capacity within the industry and the level of skill and proficiency, wages and welfare benefits of persons concerned in the industry."

- 6.3. The aim of the Board is, therefore, far reaching in seeking to generally improve the industry, its status and its productivity in the interests of the employer, the employees and the nation. This represents a fine example of how sectoral forums can benefit social partners, society as

¹⁵ In the case of the EEF, many employers sought to cut costs by cutting training; thus leading to a downward spiral of skills and thus competitive advantage that has been suicidal for many of their members.

a whole and the economy. Sectoral forums can promote security, permit flexibility and improve standards.

- 6.4. Further evidence of where collective agreements assist in the promotion of flexibility can be found in the UK agreement between the British Printing Industries Federation, (BPIF) and this union.¹⁶ This agreement arose out of a project funded by the UK Government completed at the end of 2005. In addition to updating a number of previous agreements between the parties, seven new agreements were established which include reference to inclusion of training in collective bargaining arrangements and the introduction of the working time directive provisions. As part of the general principles contained within the agreement the following extract identifies flexibility as a key component:

“(a) The parties to this agreement place great importance on the training of Amicus GPM Sector members to enable them to acquire new skills and work flexibly.

(b) Subject to suitable training and the necessary health and safety requirements, full flexibility of working between all occupations and the elimination of demarcation lines is accepted.

(c) So as to maximise the flexibility of labour provisions, flexibility of labour will be subject to individuals having training to the required skills levels. Additionally, flexibility of labour will be subject to meeting the necessary health and safety requirements.

To this end management and chapels will agree arrangements to achieve these objectives including full flexibility and where appropriate establish arrangements for the necessary training and retraining of Amicus GPM Sector members.”

- 6.5. Amicus believes that sectoral forums are also appropriate in other sectors of the economy to encourage collective agreements to benefit the economy, good employers and workers alike. In the UK the Agricultural Wages Board is the only other statutory forum remaining after the abolition of Wages Councils in 1993. This provides a sectoral forum for the determination of wages and other conditions of service. Within the public sector fora have been established in the health service and further and higher education sectors all with the objective of encouraging collective frameworks for the respective sectors.

7. Unions’ role as “eyes of the regulator”

- 7.1. Regulators key to EU law compliance, ranging from the Health and Safety Executive, to the various equalities bodies (recently combined in UK), to the Gangmasters’ Licensing Authority, lack resources to inspect and enforce the majority of employers.

¹⁶ http://www.amicustheunion.org/pdf/PAW_FINALDOC1.pdf

7.2. Unions have an interest in such bodies performing their role, and thus helping maintain appropriate standards for their members in the workplace. We are thus happy to assist in information gathering, problem reporting, and seeking compliance via collective bargaining or as a last resort, legal proceedings. Unions would be happy to work with the Regulators and government to identify ways in which we could more effectively assist such enforcement bodies. (In some cases it may be appropriate and efficient to provide some government funding for unions to do this, but this question should not be a barrier to exploring enhanced co-operation in any event.)

7.3. Amicus has also been active in supporting the National Engineering Construction Committee evidence to DTI on "Monitoring of the Posted Workers' Directive in Engineering Construction" in August 2006 and intends to monitor the application of the Directive on a continuing basis through breaches of the Directive being notified to the Sector Joint Consultative Committee where employers and unions can work together to ensure compliance.

7.4. The UK currently faces a problem of enforcement of the Working Time Regulations. The Health and Safety Executive has a role, but not the resources to enforce. The TUC are monitoring this and seeking evidence to put to the HSE and the UK Government and this should also be raised with the EU. The HSE is also lacking in resources to perform its role in monitoring safe systems of work more generally. In the three years from 2002/03, inspections by HSE's Field Operations Division (FOD) visits to workplaces have reduced by over 25 per cent, down from over 74,000 to barely 55,000 in 2004/05, a new low. Total "regulatory contacts" by the FOD inspectors which includes inspections, investigations, enforcement action, seminars, workshops and advisory activities, have also plummeted, with the 2004/05 figure of 150,763 down by 20 per cent over the three years.

7.5. The importance of the unions' role in this regard, should be recognised and encouraged. We can support action to combat undeclared work, which the Green Paper identifies as a problem.

8. Universal Standards

8.1. In 1944 the Declaration of Philadelphia set a pattern for the United Nations Charter and the Universal Declaration of Human Rights¹⁷. The first four principles are:

- Labour is not a commodity.
- Freedom of expression and of association are essential to sustained progress.
- Poverty anywhere constitutes a danger to prosperity everywhere

¹⁷ For Declaration of Philadelphia - www.ilo.org/public/english/bureau/inf/download/brochure/pdf/page5.pdf

- All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

8.2. The Declaration of Philadelphia remains current and has influenced later ILO Conventions, which all EU member states are signatories to. The ILO was consulted in preparation of the EU Social Charter.¹⁸ One extract from the EU Charter states, "All workers have the right to protection in cases of termination of employment" and is clear in its meaning.

8.3. It does not mean that workers – as opposed to employees – have no protection. It does not mean that an employer can choose to pay limited compensation and sack unfairly. It does not mean that employers must only justify their actions by reference to a very low standard. And it does not mean no rights to protection at all until after one year of employment. Inadequate protection is not protection at all. The unfair dismissal legislation in the UK is woefully inadequate already

8.4. Sound universal standards are the only means to avoid a drive for deteriorating rights and "the race to the bottom". They are not the same as a "floor of rights". We in the EU have a duty to emphasize encourage or enforce compliance throughout Europe and also the rest of the world.

8.5. In the research paper "Globalization and Labour Standards", by Werner Sengenberger and Frank Wilkinson they say:

"The purpose of a social clause is to restrict imports of products...originating in countries, industries or firms where labour standards are inferior to certain minimum standards. Producers who do not comply with the minimum requirements must choose between an improvement in pay and working conditions or running the risk of being confronted with increased barriers to trade. There is, however, to date no universal agreement on which labour standards should be included in a social clause. In this context, the most frequently cited conventions are:

- Freedom of Association (Convention No. 87)
- The Right to Organise and Bargain Collectively (Convention No. 98)
- Minimum Age for the Employment of Children (Convention No. 138)
- Freedom from Forced Labour (Convention Nos. 29 and 105)
- Freedom from Discrimination in Employment in Employment and Occupation (Convention No. 111)

¹⁸ Revised Strasbourg, 3.V.1996 <http://conventions.coe.int/treaty/en/Treaties/Html/163.htm>

- Equal Remuneration for Men and Women for Work of Equal Value (Convention No. 100)

These standards can be regarded as "basic human rights" and they are universal standards in the sense of being independent from a country's level of economic development."¹⁹

9. Decline in collective bargaining mirrors growth in inequality

9.1. Having set out the positive contribution of collective bargaining to meeting the challenges of the 21st century, including the interests of women and migrant workers, we again draw your attention to evidence that strong collective bargaining rights are associated with better income for vulnerable workers as compared to those higher up the income distribution scale.

9.2. It is this simple: "Countries with strong collective bargaining institutions, including trade unions and employers' organizations, also have better income distribution. They enjoy more equitable and socially sustainable integration. Attempts to erode and weaken these institutions have been short-sighted and may even delay adjustment processes." Susan Hayter, Integration Department, ILO²⁰.

9.3. The conclusion of the paper that "Management of Pay as the Influence of Collective Bargaining Diminishes" is:

"Changes in the structure and coverage of collective bargaining, and declining trade union influence in wage setting, have permitted a marked increase in wage inequality in Britain since 1980. Statutory measures to support union recognition for collective bargaining, and the introduction of the National Minimum Wage, constitute important changes to the institutional landscape of pay determination in Britain. Whether their longer-term effects will serve to reverse the rise in wage inequality remains an open question."²¹

¹⁹ Werner Sengenberger and Frank Wilkinson, (1995), Globalisation and Labour Standards, in Jonathan Michie and John Grieve Smith (eds), Managing the Global Economy, Oxford, Oxford University Press.

²⁰ <http://www.ilo.org/public/english/dialogue/actrav/publ/128/9.pdf>

²¹ ESRC Centre for Business Research, University of Cambridge, Working Paper No.213 September 2001

Responses to questions 1 to 14

Question 1

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

Amicus refers to those key issues considered in the introductory comments above and confirms that the list of priorities must include:

- a) Collective Agreements being encouraged to provide effective flexibility with a voice and rates for the job across an industry.
- b) The establishment of effective sectoral forums for every sector with strong union involvement – as explained on page 10 above.
- c) Sound minimum standards based on universal principles, which may be enhanced by legitimate collective agreements, enforceable at least by inclusion in the individual worker's contract.
- d) Refusal to deal with those who do not accept and maintain universal standards.

Question 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?

- a) The adaptation of labour law and collective agreements can obviously contribute to improved flexibility and employment security and a reduction in labour market segmentation. We have set out above some of the evidence in support. The emphasis should be on encouraging flexibility from collective bargaining, underpinned by the application of universal standards.
- b) There are issues around the legal framework affecting collective agreements that need attention. There is uncertainty in the application of the law through the cases. One case in point highlights the problem – that of *Kaur v Rover* in 2004²², where a collective agreement on flexibility in return for job security was effectively binding on the employees to deliver flexibility but was said by the court to be unenforceable in relation to redundancies, when the court decided that the terms of the agreement were said to be merely aspirational. It is obvious that such laws and the interpretation of them will hinder agreements on flexibility.

²² *Kulvinder Kaur v MG Rover Group Limited* Court - Court of Appeal [2005] IRLR 40

Question 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?

- a) We refer to our comments above (page 4) on the role of collective bargaining and the need to encourage education within the legal framework, whilst promoting universal standards and avoiding any diminution in employment rights relative to social security.
- b) We are concerned that the value of the contribution of SMEs to the EU, its economy, nation states and citizens is over stated by reference to the evidence. SMEs are not to be treated as an exception, save that their contribution to education and opportunity to benefit from flexibility may be spread by means of national and European wide incentives, such as that approach expressed in the Green Paper in relation to Austrian Severance Act.

Question 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?

- a) We refer back to the evidence and arguments raised above (page 6). There has been increased employment and recruitment in the UK alongside partial improvement in employment security. Elsewhere continued high levels of employment protection and a fundamental role for collective agreements and sound social protection have not restricted flexibility, reflecting the best available examples in the EU towards universal standards.

Question 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?

- a) We are concerned about the presumptions contained in the question and we refer to the comments above. It seems to us that we cannot expect EU member states to give effect to a policy akin to that of Denmark, with a high tax system, high and effective levels of support for those out of work and vulnerable workers, including good benefits and training, but with lower employment protection legislation.

Question 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?

- a) There is a substantial and increasingly important role for law and in particular collective agreements negotiated between the social partners to promote access to training and transitions between work over the course of a fully active working life.
- b) Business, and in particular SMEs, need to be encouraged to begin to play their part.

Questions 7, 12 & 14

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*?

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 regardless of the Member State where they work? Or do you believe that Member States should retain their discretion in this matter?

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

- a) There is a clear need for clarity in Member States' legal definitions of employment and self-employment, as there is a need for a convergent definition of "worker". The EU should, of course, work to combat undeclared work.
- b) The question of the status of workers requires equal treatment and rights for all workers. The complications over this issue in the UK include those in relation to ministers of religion. In the UK the House of Lords²³ and the Employment Appeals Tribunal²⁴ are clearly saying that the legal framework must be reviewed and changed. Both cases noted below gave leave for the applicants to take cases to an Employment Tribunal, the former case on a Sex Discrimination claim which was then settled, and the latter, which is now being appealed to the Court of Appeal by the New Testament Church of God, on a claim for Unfair Dismissal. This second case is scheduled before the Court of Appeal in July 2007.
- c) In 2005, Amicus met with the EU Commissioner, Commissioner Spidla to set out the need for employment protection on Ministers of Religion across Europe, since many member states, particularly

²³ Church of Scotland v. Rev. Helen Percy, [2005] UKHL 73

²⁴ New Testament Church of God v. Rev. Sylvester Stewart, [2006] UKEAT/0293/06/DA

those from a Lutheran tradition (Scandinavia, Belgium, the Netherlands, and so on) have full employment rights for their Ministers of Religion, and yet the UK with some other member states face inequality of treatment due to the way that Ministers of Religion are defined under their national definitions of what constitutes an employee. Clearly this is a technical loophole that needs to be closed.

- d) Consistent and clear rights will take care of the problems of workers operating in a transnational context, throughout the Community and beyond its borders.
- e) The need to deal with confusion as to employment status and the need for equal treatment for all workers is also considered in the context of a response to questions 9 and 10 below.

Question 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?

- a) As explained above, the citizens and states in the EU should seek nothing less than positive sound universal rights which accord with giving effect to existing international and European standards. This is not the same as a "floor of rights", that provides low basic levels below which people should not drop and which may be used by the unscrupulous to create a ceiling.
- b) There is no evidence to support the assertion that this will have adverse consequences on *bona fide* businesses or economies that many might fear. There is good evidence, however, that positive sound universal rights, giving effect to existing standards will benefit all.

Questions 9 & 10

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"?

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

- a) There is a significant and growing problem here, which highlights general failings of the legal employment relationship. The particular solution would be to provide for joint and several liability in relation

to three-way relationships including sub-contracting and agency work. A simple expedient akin to that contained in the Employer's Liability (Defective Equipment) Act 1969 would be sufficient²⁵

- b) In the UK in particular the problem is such that workers may never be sure, even after obtaining legal advice from an expert in the field, whether they are employed by an agency, a sub-contractor, or by the end user of their services, or none of them. In *Johnson v Montgomery Underwood* in 2001²⁶ the Court of Appeal asked Parliament to intervene.
- c) Other cases demonstrate the abuse by businesses and the vulnerability of workers in a practical setting.²⁷ In December 2006, in another case the President of the UK Employment Appeal Tribunal said:

*"We should not leave this case without repeating the observations made by many courts in the past that many agency workers are highly vulnerable and need to be protected from the abuse of economic power by the end users...A careful analysis of both the problems and the solutions, with legislative protection where necessary, is urgently required."*²⁸

- d) In spite of the draft Agency Workers' Directive²⁹ and subsequent promises nothing has been done. Amicus was encouraging a private members bill, the *Temporary Agency Workers (Prevention of Less Favourable Treatment) Bill*, which seeks to address this issue. The Bill was due for a second reading on 2 March 2007, but was "talked out" by the Government and is therefore lost.

²⁵Employer's Liability (Defective Equipment) Act 1969.

1. (1) Where...(a) an employee suffers personal injury in the course of his employment in consequence of a defect in equipment provided by his employer for the purposes of the employer's business; and (b) the defect is attributable wholly or partly to the fault of a third party (whether identified or not), the injury shall be deemed to be also attributable to negligence on the part of the employer (whether or not he is liable in respect of the injury apart from this subsection), but without prejudice to the law relating to contributory negligence and to any remedy by way of contribution or in contract or otherwise which is available to the employer in respect of the injury.

²⁶ *Johnson v Montgomery Underwood* [2001] IRLR 269

²⁷ *RNLI v Bushaway* [2005] UKEAT 0719/04, and *Bunce v Potsworth Ltd (t/a Skyblue)* [2005] IRLR 557 to name but two.

²⁸ *James v Greenwich Council* EAT 18 Dec 2006 UKEAT/0006/06 paragraph 61

²⁹ COM/2002/0149

Question 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?

- a) The Amicus position is that there is already more than enough flexibility for employers in relation to individual workers. There should be no further erosion of protection of workers' health and safety to the level taken by the UK in failing to implement fully and endorse the Working Time Directive (WTD) through the UK Working Time Regulations (WTR).
- b) The shameful stance adopted by successive governments should not be rewarded. Even the Working Time (Amendment) Regulations 2006 do not go far enough. Enforcement is limited.
- c) There is no evidence that implementation of the WTD has significantly damaged businesses or the economies of Europe. The UK still has a long hours culture and there is evidence that this has a significant adverse effect on productivity. Britons work longer hours than almost all their European counterparts according to a research project by The Work Foundation. However, despite working the longest hours in the EU-15, three hours per week above average, UK productivity is only 95 per cent of the EU-15 average with a ranking of 10 out of 15.
- d) Full time employees in the UK work the longest hours in Europe. The average for full timers in the UK is 43.5. In France it is 38.2 and in Germany 39.9, yet both are more productive than the UK. Long working hours have hampered the achievement of high productivity in the UK. Too many employers have tried to use long hours as a substitute for improving work organisation or investing in training and new technology. As working time fell during the last few years our economy has improved and productivity has risen.
- e) Evidence suggests that long hours businesses are hampered by the increased costs caused by:
 - the loss of productivity caused by fatigue;
 - poor quality work and a large number of errors;
 - more ill health and absences amongst the workforce; and
 - by increased turnover and the smaller recruitment pool available to long hours employers.

Question 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?

- a) Administrative authorities - enforcement agencies, regulators, inspectorates - need to co-operate more and, as we have seen, there is great potential for the role of the social partners to be encouraged and to develop their role. Amicus is prepared to play its part, to the benefit all, in relation to collective bargaining, education, and co-operating to enforce Community labour laws in support of universal standards.

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Amicus**

March 2007

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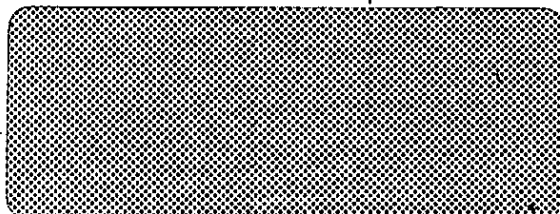
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