

Letter dated:
22 January 2007

From:
Austrian Chamber of Agriculture
(*Landwirtschaftskammer Österreich*)
Schauflegasse 6
Vienna

To:
Employment DG, Unit F/2
(re. Green Paper on labour law)
European Commission
Brussels

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

Ref.: V/2-012007/B-01

Modernising labour law is an important element in improving the competitiveness of firms, and at the same time ties in with the aim of creating greater job security. The social partners in Austria, including the Austrian Chamber of Agriculture (*Landwirtschaftskammer Österreich*), have jointly drawn up specific proposals aimed at preparing the labour market for the coming challenges ("*Wachstum und Vollbeschäftigung*", *Vorschläge der Sozialpartner* [Growth and full employment, proposals of the social partners], Vienna, December 2006). Most of the points raised in this document were included in the new Austrian Government's programme for the 2006–2010 legislative period, and more specifically in its chapter on "economics and labour". The following observations in response to the European Commission's questionnaire draw to a large extent on the provisions and proposals set out in the above-mentioned programme.

Question 1 – Priorities

The focus is on improving the competitiveness of firms in a changing environment. The Austrian Government has set itself the ambitious aim of achieving full employment by 2010. Here, particular attention should also be focused not only on those sectors in which new jobs are being created, but also on those where existing job opportunities are being safeguarded, such as the agriculture and forestry sectors. There is also a need to integrate groups which are "removed" from the jobs market (the long-term unemployed), as well as disabled people.

More specifically, employee-orientated measures have to be put in place, such as the promotion of training and further training, as well as measures aimed at firms (especially SMEs) in order to create incentives to take on employees. In this connection, the obstacles to taking on new employees, and the costs involved, need to be reduced.

Austria's plans to codify and simplify the entire field of labour law could represent a major step. Given the mass of European legal provisions, this would also be of interest at European level.

Question 2 – Adaptation of labour law to improve flexibility and employment security

In the Green Paper itself, reference is made to changes to Austrian law governing severance payments. There was a consensus among the social partners in favour of this reform, which represents a modernising step with a view to mobility and the safeguarding of jobs. Further improvements should also be introduced to make working arrangements more flexible. As far as seasonal sectors such as agriculture and forestry are concerned, particular mention should also be made of Austrian plans to increase the maximum number of working hours, coupled with new reference periods under collective agreements. Changes regarding employment protection might also make for a greater readiness to take on new employees. This should be combined with greater welfare provision for the unemployed ("flexicurity" approach).

Question 3 – Effect of existing regulations and collective agreements on opportunities to increase productivity and introduce new technologies

Inhibiting factors will always exist in this area, and thus there will also always be a need for improvements. Measures are needed to support SMEs in particular, for example in the field of energy production. In addition to incentives for firms, it is also important to have adequately trained employees.

Question 4 – Facilitation of recruitment under permanent and temporary contracts while ensuring adequate social protection for employees

As already mentioned, more incentives to take on employees should be created through, for example, changes to the law regarding employment protection. The prospect of taking on trainees in Austria should be made more attractive by providing for reciprocal rights of termination at the end of the first and second years of training. In addition, various grants for taking on further trainees are available to entrepreneurs. Specific solutions would have to be found for seasonal sectors; in the agriculture and forestry sectors, for example, the reduction in the number of workers during the winter months is almost without exception tided over by promises of re-employment, thereby offering adequate job security.

Question 5 – More flexible employment protection arrangements and more effective assistance for the unemployed

This strategy has already been discussed on repeated occasions, and may point to the way towards a greater readiness to take on new employees while at the same time offering employees more protection. A coherent approach is needed, which also calls for measures during periods of unemployment, such as fixing the rate of income compensation, closer case-management, increased training provision, and changes to legal provisions on what employment a job-seeker can reasonably be required to accept.

Question 6 – Promoting access to training and transitions between different contractual forms

Labour law provisions are primarily concerned with opportunities for training/educational leave, which should also be offered increasingly to older employees. Firms should be given appropriate incentives (such as grants in the context of labour market policy, tax incentives, learning accounts); the leave itself must be arranged between the employer and employee. Decisions should in all events be taken within firms, and not pursuant to collective agreements, which is important for SMEs in particular.

Question 7 – Clarification of the definitions of employment and self-employment

Responsibility for defining employment, self-employment, and possible combinations of the two, lies with the Member States and should remain there. Austria has detailed legal

provisions in place, as well as numerous court decisions which have dealt adequately with this question. Austria is planning to provide better social protection for persons in what are known as "non-standard forms of employment" which display characteristics of both employment and self-employment. For example, it is intended that "free contracts of employment", which already have the same status as employment relationships for the purposes of social insurance, should also be incorporated into the other social security schemes. This applies especially to unemployment insurance. Arrangements should be introduced enabling the self-employed to take out voluntary unemployment insurance, which could also cover farmers and foresters.

Question 8 – Basic set of provisions dealing with working conditions regardless of the form of contract

We reject the idea of provisions designed to protect employees being applied in an undifferentiated and uniform way to all other forms of employment. Family members whose main occupation is farm work would ultimately have to be treated as employees, which would fundamentally undermine the principle of contractual freedom and the Austrian tradition of family-run farms. This measure would also significantly increase farms' running costs, and lead to a disproportionate increase in administrative work. It would be preferable to have a system of incentives for voluntary social protection – such as the above-mentioned unemployment insurance for the self-employed – or to have social insurance institutions offer advice on social security issues.

Questions 9 and 10 – Multiple employment relationships – clarification of accountability and liability – legal position of temporary agency workers

In Austria, multiple employment relationships and the accountability of the contracting parties are adequately regulated in law (Temporary Employment Act (*Arbeitskräfteüberlassungsgesetz*)). The provisions of the amended proposal for a directive on working conditions for temporary workers (COM (2002)701 final) should be kept in mind here. In general terms, it should be examined in what areas employment in connection with the provision of services (hiring-out of workers, temporary employment, secondment) can be intensified.

Question 11 – Organisation of working time – greater flexibility and standard of protection

An important point in the agreement between the social partners and in the Government's programme is the issue of more flexible working time, and in particular the maximum permissible working hours and reference periods. The legal framework is provided by the EU's working time Directive, which is in the process of being revised. It should be left to individual countries to decide whether arrangements should be embodied in statutory provisions or (as in Austria) in collective agreements. The possibility of increasing the maximum permissible number of working hours (per day or week) should be introduced in combination with measures for better health protection and more effective reconciliation of working and family life. The various sectors or firms involved should then be in a position to adopt the working-time model best suited to them and their employees.

Question 12 – Mobility of employees – safeguarding the rights of migrant workers

Cross-border issues should in all cases be handled at European level. However, legal provisions such as the definition of an "employee" should remain a matter for the Member States in accordance with the principle of subsidiarity. Apart from the difficulties which would be entailed in harmonising the concept of what an employee is, this would have enormous implications for other areas of the law, and as regards enforcement or in terms of possibly protracted legal proceedings dealing with problems of interpretation (which may go as far as the European Court of Justice). In Austria, the legal position of migrant workers as

regards their being treated in the same way as national workers is safeguarded through reference to the law applying at the place of employment. Important factors here are cooperation between public employment services, mutual recognition of professional qualifications, and making freedom of movement for all workers between all Member States a reality as quickly as possible.

Question 13 – Enforcement

In order to effectively enforce legal claims, a comprehensive agreement on administrative enforcement should be concluded between the Member States.

Question 14 – Combating undeclared work

From Austria's point of view, there is no need for EU assistance in combating undeclared work. The existing legal provisions can be regarded as sufficient, and Austria has set up its own enforcement authority.

Yours faithfully,

(signature)

Rudolf Schwarzbock
President of the
Austrian Chamber of Agriculture

(signature)

August Astl
Secretary-General of the
Austrian Chamber of Agriculture