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European Commission Green paper
“Modernising labour law to meet the challenges of the
21st century”

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Joint opinion
of the German social insurance
umbrella organisations

presented on 30 March 2007

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The EU Commission's Green Paper forms part of the extensive debate concerning the concept of "flexicurity" which the EU Commission would like to conduct this year in various contexts. With the term "flexicurity", a link is to be created between greater flexibility in the labour market (flexibility) on the one hand and social protection (security) geared to this on the other. In this connection, the emphasis is laid on labour law relating to individuals and mainly the right to give notice, the need for the reform of which is to be discussed in the course of a consultation process. This approach contributes to the third priority of the European employment strategy - the adaptability of workers and enterprises - and thus to the employment components of the Lisbon strategy¹.

As a result, a kind of "universalisation" of working conditions and social rights is aimed at. From this is derived a need for action in several fields:

1. Development of a "standard employment contract" with greater flexibility (see Question 8 -"working conditions"; see also Question 4)
2. Development of minimum requirements for social protection (see Question 8 -"working conditions"; see also Question 5)
3. Distinguishing between self-employment and dependent employment
Preconditions and consequences (see Question 7)
4. Need for action in the case of temporary employment relationships (see Questions 9, 10 - Employment status of temporary workers and responsibility for compliance with workers' rights)
5. Employment rights of cross-border mobile workers - posting, frontier workers, transfer of an undertaking (see Question 12: Need for a more uniform EU-wide definition of "worker" in the application of EU **labour law** provisions)
6. Combating undeclared work (Questions 13 and 14: increased administrative cooperation between Member States and further initiatives at EU level).

The aim of the EU Commission is that the Member States should reach agreement on common principles relating to flexicurity by the end of the year at the latest.

¹ See the Joint Employment Report 2005/2006, "More and better jobs: Delivering the priorities of the European employment strategy", Chapter 2 "Summary".

Most questions in the Green Paper, especially those not mentioned above, relate to the further development of labour law and are therefore not the direct responsibility of the German social insurance umbrella organisations. Our answers are therefore restricted to the aspects which affect the sphere of responsibility of social insurance.

General remarks

The German social insurance umbrella organisations welcome the EU Commission statements in the Green Paper to the effect that working conditions and improving the quality of work should be organised and regulated primarily by the Member States themselves and that in these areas the European level has only a complementary and supporting function to perform.

At the same time the DSV umbrella organisations note with concern that so far the “flexicurity” debate at European level has focused mainly on aspects relating to a reduction of job security, while far less attention has been devoted to the aspect of also ensuring the widest possible social protection against the risks of flexibility. Symptomatic of this is the political need for action described in the most recent Commission communication on the Lisbon strategy². There it is stated: “Greater security and employability for those on the margins will need to go hand in hand with greater flexibility for those on permanent contracts.”

This approach, under which employment security is understood to be only an alternative to the previous job security, does not go far enough. The basic assumption that greater social protection for employees on the margins of the labour market can be achieved only by a lowering of the security level linked to a standard employment relationship runs through the Green Paper without any substantiation. However even if it were wished to endorse this thesis, another aspect should be emphasised: if relative security in permanent employment relationships is to be reduced, social protection schemes would have to be adapted by, for example, better protecting the transition from one job to another or between different work phases. This adaptation is apparently considered to be unnecessary. A “flexicurity” strategy understood in this sense cannot be in accordance with the objectives and principles of the EU as laid down in Article 2 of the EC Treaty.

Re (2): Development of the minimum requirements for social protection

The German social insurance umbrella organisations welcome any approach aimed at improving the social protection rules for employees. They therefore call on the European Commission to ensure that the “flexicurity” principles announced for the summer of 2007 not only deal with labour-market flexibility and employment relationships but also sufficiently take account of necessary support and protection measures.

² Commission communication of 12.12.2006: “Implementing the renewed Lisbon strategy for growth and jobs: A year of delivery” (COM (2006) 816).

This applies first to groups in a weaker position in the labour market such as older and younger workers and to persons with disabilities. However, not only these groups in the "marginal areas" must be protected from being permanently shunted, under the label of flexibility, into poorly paid or precarious employment relationships. Whoever supports a flexible world of work especially increases for the "normal worker" the risk of unforeseen events and ruptures in the employment record which will increasingly become the normal case. The provision and support schemes must be prepared for this in good time.

The aim of the Lisbon strategy is to create not only more but also at the same time better jobs. The concept of "flexicurity" also has to be fitted into this objective. A fair income and also an appropriate level of social protection also form part of the quality of work.

Re (3): Relationship between dependent and self-employment

Approval can be given to the Commission analysis indicating that the distinction between dependent and self-employment is often dubious and open to abuse and, by reference to the extent of social protection required, is in many cases outdated. The extent and level of social protection should not depend on this distinction, especially as the activity of self-employed persons is today increasingly associated with the same or even greater social risks than the activity of dependent employees. The necessary decisions to reach an appropriate social insurance for every gainfully employed person must, however, be taken at the level of the Member States.

Re (5) and (6): Cross-border mobility, combating undeclared work

The German social insurance umbrella organisations consider that standardising the term "worker" at European level is neither necessary nor likely to achieve its intended aim. In Community secondary legislation, the personal scope of legislation is rightly determined according to the whole purpose of the relevant Directive. Thus it can be quite appropriate, for example, in the area of labour protection, to formulate the scope of the corresponding Directive more broadly and therefore to include certain forms of self-employment while, in the case of other topics, the scope is limited to dependent employment. The varying differentiation of the scope of a Directive according to subject matter makes sense and should therefore not be sacrificed to a uniform definition of "worker".

Likewise, the ascertained misuse in some cases of posting certificates cannot be overcome by standardising the term "worker". The misuse of posting certificates is attributable less to the conceptual separation of "workers" on the one hand and "self-employed persons" on the other and rather relates to the social-insurance and contribution rules associated with the relevant status. Always required therefore are: a thorough examination of the facts by the bodies prescribing the social-insurance law to be applied; vigilance as regards certificates issued in other Member States concerning the social-security law to be applied; and good cooperation based on trust between

the bodies and liaison agencies of the Member State so that certificates issued erroneously are withdrawn.

An additional Commission proposal aims at regulating more clearly the responsibilities of the parties involved in multilateral business relationships and at arranging for the secondary liability of other participating enterprises. In fact it is a problem in practice for social insurance bodies to make hirers liable for social security contributions owed by temporary work agencies. Clear community legal rules in this regard are therefore to be welcomed. They should make it easier for social insurance bodies to enforce their lawful demands.

This opinion has the support of all German social insurance umbrella organisations:

- AOK-Bundesverband, Bonn**
- Bundesverband der Betriebskrankenkassen, Essen**
- Bundesverband der Innungskrankenkassen, Bergisch-Gladbach**
- Bundesverband der landwirtschaftlichen Krankenkassen, Kassel**
- Verband der Angestellten-Krankenkassen, Siegburg**
- Arbeiter-Ersatzkassen-Verband, Siegburg**
- Knappschaft, Bochum**
- See-Krankenkasse, Hamburg**
- Hauptverband der gewerblichen Berufsgenossenschaften, Sankt Augustin**
- Bundesverband der landwirtschaftlichen Berufsgenossenschaften, Kassel**
- Bundesverband der Unfallkassen, München**
- Gesamtverband der landwirtschaftlichen Alterskassen, Kassel**
- Deutsche Rentenversicherung Bund, Berlin**