MODERNISING LABOUR LAW TO MEET THE CHALLENGES OF THE 21ST CENTURY
EUROCOMMERCE’S CONTRIBUTION TO THE GREEN PAPER

POSITION PAPER

28 March 2007
OVERALL COMMENTS

The Commerce sector provides employment to over 27 million people in the EU. It is also one of the few sectors where employment is increasing. EuroCommerce members bring opportunities to those who may find it difficult to enter the labour market. They are also committed to enhance their perspectives through training and experience. In this highly competitive sector, companies invest in training to meet ever changing consumer needs, provide staff with more interesting jobs and boost competitiveness.

The world in which we live is changing rapidly. In Europe ageing populations, increased migration, and falling birth rates pose substantial challenges to long-term prosperity. Beyond the EU the rise of emerging Asia and continued economic out performance by the US pose significant challenges. We therefore welcome the debate on the role of Labour Law within the context of the Commission’s Strategy for Jobs and Growth.

The Value of Flexibility and Its Link to Prosperity and Security

EuroCommerce believes that the most effective response to the changing world in which we live and work is for social policy and labour law to support us all - employers, employees, self-employed, unemployed, – deal with the practical challenges that a changing world poses.

In the rapidly evolving global economy long term security and prosperity are best promoted by giving people the skills and support they need to adapt to change and remain employable throughout their working life.

EuroCommerce welcomes Commission activity to understand the role Labour Law has to play in promoting flexibility within EU labour markets. The Kok report rightly stated that flexibility is not just in the interest of the employers and acknowledged that flexible forms of work benefit employees. This reflects the experience of our members.

Changing lifestyles are reflected in changing employee demands. For employers attracting and retaining good staff is central to the ability of organisations to compete. The competitiveness of individual organisations is directly linked to long term prosperity and security for both the employer and their employees. Increasingly, our members are coming under pressure to offer a wider range of flexible work options in order to recruit and retain staff. Indeed, some members even report greater ease filling vacancies which allow employees to balance work and home – either through part-time or flexible working – than filling full-time, fixed hour vacancies.

At the same time, increasing numbers of people feel under pressure to balance busy home and work lives. The ability to work flexibly helps individuals balance competing needs. Lack of options to work flexibly acts as a significant barrier preventing many from entering the workforce – such as those with young families or caring responsibilities for elderly relatives, those wanting to combine work and study etc. Lack of flexibility therefore directly contributes to the segmentation of labour markets (a situation identified as undesirable in the Green paper).
The Commission’s employment report 2006 states that stringent employment protection legislation “tends to worsen the employment prospects of those groups that are most subject to problems of entry in the labour market, such as young people, women and the long-term unemployed.” EuroCommerce would agree.

In this context, policy makers should work to give employers the means with which to offer a range of work options to their employees. We would also urge policy makers to identify any disincentives which discourage employers from offering flexible work options (legal, fiscal or economic) and understand how best to remove them.

Non-Standard Forms of Work

We are concerned that the Commission’s Green Paper gives an overly negative view of what it describes as “non-standard” forms of work.

In particular, the Commission only appears to consider as “non-standard” all forms of work which depart from the model of the permanent employment relationship with a single employer constructed around a full-time, continuous working week. This is not a view to which we can subscribe. Nor does it reflect the experience of our members.

Flexible work arrangements have become standard features in European labour markets. Their presence reflects changing lifestyles and innovation and their significance is growing.

We are concerned that the Commission’s approach to non standard work risks unintended consequences such as a reduction in the ability of employees to benefit from flexible work options or an increase in administrative cost complexity.

It is important to recognise the positive contribution that forms of work considered by the Commission to be non-standard play in helping employees work in a way to suit their lifestyle and help organisation respond to change.

Breaking Down Stereotypes

Our members know from their own experience that flexible working is of increasing importance to large numbers of people. It is demand driven, bottom up, by employees increasingly wanting to balance home and work lives.

An increasing body of independent evidence highlights the value of flexible work options for employees. For example:

- A 2004 Statistics Finland study states that 2/3 of all people working part-time do so out of choice.

- The UK government’s “Success at Work” policy document states that fewer than one in ten people who work part-time do so because they cannot find permanent employment.

---


2 SUCCESS AT WORK, MARCH 2006 Protecting vulnerable workers, supporting good employers.
• A study by the Recruitment and Employment Confederation (REC) suggests that up to half of agency workers are not seeking a permanent job. 52% choose agency work for reasons such as increased flexibility, better pay or to gain broader work experience³.

Only by allowing people to work in a way that suits their lifestyle will Europe start to break down some of the barriers that keep people out of work. All too often, those arguing in favour of greater flexibility are caricatured as arguing for no rules/social protection. This is simply not the case. In reality, leading commerce business combines a range of work options in an attempt to attract and retain the best staff available.

More needs to be done to help develop consensus on the value of flexibility for employees and employers. Policy makers should encourage social partners to discuss ways of using flexible work options, to break down barriers that keep people out of work.

The Role of Labour Law/ Better Regulation

The clear link between regulation and competitiveness has been highlighted in numerous independent studies. The Commission’s own Better Regulation programme as part of its Strategy for Jobs and Growth explicitly recognises this fact.

A detailed study by McKinsey⁴ in 2004 highlights that the productivity gap between Europe and the US has led to lower levels of retail employment in Europe rather than in US. US retail employers employ 9.6% of the overall workforce, compared with 8.3% in the EU. This gap – McKinsey estimate – represents 2.5 million jobs. McKinsey also estimates that the impact of regulation accounts for 40 to 60% of the productivity gap. It is therefore important to understand the contribution labour law makes in discouraging retail employment growth.

The debate surrounding the Green Paper is an important opportunity to understand the impact of Labour Law on competitiveness and long-term prosperity.

For example, policy makers need to be aware of regulating away flexibility by increasing the cost of employing temporary agency workers. Restricting employer flexibility reduces the choice for individual employees.

The Importance of Self-Employment

EuroCommerce urges the European Commission to encourage entrepreneurship in Europe and to adopt a positive approach regarding “self-employment”.

This is of particular relevance to the commerce sector in which over 95 % of businesses are SMEs. Commerce represents significant opportunities for individuals wishing to set up their own businesses. We therefore see the promotion of self-employment opportunities as key to creating more jobs and growth across Europe.

³ Recruitment and Employment Confederation “Satisfaction levels amongst temporary agency workers” (2005)
⁴ Retail’s contribution to Europe’s prosperity
A Europe-Wide Solution?

Our experience suggests wide variations in attitudes towards flexibility and security across all 27 member states. For example, attitudes to parental leave vary:

69% of male employees take up their entitlement to parental leave in Sweden, in Slovenia the rate is 66% and in Finland 59%. In sharp contrast, very few establishments with experience of parental leave have had at least one father on parental leave in Cyprus (1%), the Czech Republic (2%) and Hungary (5%). There is an EU average of 30%5.

We are concerned that the high level of variation in attitudes and practice across the EU means that attempting to develop Europe-wide solutions risks failure. This has been illustrated in the recent attempts to review the Working Time Directive and introduce regulation aimed at Temporary Agency Workers.

Both examples demonstrate how “one-size fits all solutions” fail to meet the varying needs and attitudes across the member states.

Whilst we welcome European level activity to identify and share experience between member states, we urge caution in trying to identify Europe-wide solutions. We therefore believe that the EU should take up the role of promoting and exchange of national examples and monitoring national reforms rather than trying to introduce one-size fits all reforms to labour law.

---

5 Parental leave in European companies - Establishment Survey on Working Time 2004-2005 - European Foundation for the Improvement of Living and Working Conditions
1. THE KEY POLICY CHALLENGE – A FLEXIBLE AND INCLUSIVE LABOUR MARKET

1. What would EuroCommerce consider to be the priorities for a meaningful labour law reform agenda?

Meaningful labour law reform should aim to encourage new approaches to maximising long term prosperity and competitiveness through the availability of flexible work options.

We recommend the Commission to focus on 3 priorities:

1. Supporting all actors – employers, employees, self-employed, unemployed - to adapt to the changing world in which we live and work. Identifying barriers that prevent people from adapting successfully and developing solutions to overcome such barriers should therefore be a priority. Lack of flexible work options counts as a significant barrier in many member states. This also includes ensuring an environment where legal frameworks do not protect people with a job at the expense of people without a job.

2. Understanding how labour law can be simplified to reduce complexity and cost, while maintaining a sufficient level of protection. This would have the added benefit of removing incentives for individuals and unscrupulous employers to avoid compliance.

3. Overcoming stereotypes - More needs to be done to help develop consensus on the value of flexibility for employees and employers. Policy makers as well as social partners should find ways of using flexible work options as a way of breaking down barriers that keep people out of work and in helping people balance busy home and work lives. A meaningful labour law should also focus on the employability of people rather than only to secure existing jobs. This will not be sufficient in the future! Careers will change. A vocational training will be the basis for a life long job career but not more than that. Workers will have to continue education constantly to maintain their employability. Labour law and social dialogue should aim at supporting workers in this lifelong learning approach.

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?

Security and flexibility are very often two sides of the same coin. There will be no security without adaptability in the future. Adaptability is a key factor for a sustainable employability. Flexible working offers considerable opportunities for workers. In a knowledge-based economy, people look for jobs that offer meaning, autonomy, motivation, learning opportunities and work arrangements that allow them to combine busy work and private life.

It is sometimes contended that new forms of contractual relationships have negative side effects, as workers on such contracts are believed to be in a “precarious” position due to lower levels of employment and social protection. Some argue that workers enter into non-standard contractual relationships for lack of anything better, because
they cannot find a full-time permanent employment contract. Both arguments represent the idea that new forms of work create situations which ultimately result in dual labour markets with distinct “insiders” and “outsiders”.

**Particular effort needs to be placed on addressing barriers that prevent people from entering the workforce.** Lack of flexible work options counts as a significant barrier in many member states.

A job is the best safeguard against social exclusion. In that sense, the real outsiders are those with slim or no chances to enter or re-enter the labour market because of poor access to training and education and because of rigid employment protection legislation for regular contracts which deters employers from hiring. Such lack of opportunity in combination with over-regulation is driving the real segmentation of labour markets.

Our sector works hard to bring opportunities to those who may find it difficult to enter the labour market and to enhance their perspectives through training and experience and we would be happy to share our experiences in more detail with the Commission.

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 detailed study by McKinsey in 2004 highlights that the productivity gap between Europe and the US has led to lower levels of retail employment in Europe rather than in US. US retail employers employ 9.6% of the overall workforce, compared with 8.3% in the EU. This gap – McKinsey estimate – represents 2.5 million jobs. McKinsey also estimates that the impact of regulation accounts for 40 to 60% of the productivity gap. It is therefore important to understand the contribution labour law makes in discouraging retail employment growth.

For example, policy makers need to be aware of regulating away flexibility by increasing the cost of employing temporary agency workers. Restricting employer flexibility reduces the choice for individual employees.

The only sustainable source of raising productivity is innovation and gains in efficiency. That means the implementation of new products and services which give rise to fast-growing new businesses, the use of new technologies, but importantly also new ways of organising work. Today innovation is much more about transforming business processes and exploring new business models than in the past, when innovation primarily took place in the laboratory. This is especially true in services. The changing nature of innovation has made organisational agility a key component of competitiveness.

---

6 Retail’s contribution to Europe’s prosperity
Business model innovation requires flexibility and the allowance for structural change. Change is more readily introduced if there is economic flexibility and scope for changes in the location, organisation, inputs and outputs of enterprises. If organisations cannot transform or it takes too long or is too costly, then innovation will not occur or will not provide the benefits that drive investment. This will lead to a lack of competitiveness not only within the sector but for the EU in general.

This conclusion has important implications for public policy in that employment legislation facilitates or restricts the development of innovative business and workforce models.

We are concerned that employment legislation in some members states hinders such an innovation from taking place.

More concretely, one should be reinforcing the simpler legislation for the internal market initiative (SLIM) and strengthening impact assessment to consider impacts on competitiveness, to measure administrative burdens on companies for each new piece of legislation and assessing possible alternatives to legislation. Impact assessments should be exercised by independent bodies and be based on a clear methodology.

Also, administrative and regulatory obstacles to the setting up and management of businesses should be reduced, e.g. by establishing “one stop shops” for setting up businesses and improvement should be made on the balance between risk and reward of entrepreneurship; facilitating access to finance for SMEs and enhancing the role of the SME envoy. This is especially important for the Commerce sector given that SMEs constitute over 95 % of all European Commerce businesses and Commerce represents a rich source of opportunities for citizens wishing to start their own business.

We would be keen to engage with the European Commission to help understand the impact of labour law compliance cost and complexities on SMEs.

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?

Many Commerce businesses work hard to ensure their standard contracts incorporate opportunities for flexibility. This is of central importance in attracting and retaining good staff. Options such as working flexi-time, career breaks, compressed work, dependency leave, enhanced paternity leave, additional maternity leave, study leave, store swap and shift swap procedures can be found in many commerce businesses.

For employers attracting and retaining good staff is central to their ability to compete. The competitiveness of individual organisations is directly linked to long term prosperity and security for both the employer and their employees. Increasingly, our members are coming under pressure to offer a wider range of flexible work options in order to recruit and retain staff. Indeed, some members even
report greater ease filling vacancies which allow employees to balance work and home – either through part-time or flexible working – than filling full-time, fixed hour vacancies.

There are still obstacles that need to be overcome in order to increase firms’ incentives to hire and promote the wider usage of innovative forms of work on the side of governments, employers and also society in the area of legislation, education and public awareness. For example, the Swedish government has founded an initiative called “new start for job” which provides subsidies to companies creating jobs for people that have been unemployed for a long time. The UK government has a new initiative as well called “Local Employment Partnerships” to tackle unemployment and social exclusion.

In the area of labour law the challenge is to provide opportunity and acceptable standards while ensuring that the rationale to create resilient and responsive organisations is not undermined.

The starting point for a debate on the future of labour law must be that in a global environment, employability comes from giving people the skills they need to remain adaptable and employable throughout their working life. Whereas investment in people’s skills needs to be increased and better targeted, laws and regulations must at the same time be able to accommodate rapid economic, social and technological change.

To this end, we urge the European Institutions and national governments to implement the recommendations made by Wim Kok’s 2003 Employment Task Force “to alter, where standard contracts are overly rigid, the level of flexibility provided in areas such as periods of notice, costs and procedures for individual or collective dismissal, or the definition of unfair dismissal”.

### 2. Modernising Labour Law – Issues for Debate

#### a. Employment Transitions

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?**

Active labour market policies are critical to Europe’s long term prosperity. To be both effective and actionable, attempts should be made to balance interrelated types of interventions including:

a] Accelerating reform of the regulatory environment to minimise compliance cost and complexity without watering down levels of protection;

b] Investing in education and training to ensure that individuals have relevant skills throughout their working lives and to maximise employability; and

c] Adopting a system that provides basic financial support in times of unemployment but does so in a way which avoids providing disincentives for those outside of the job
market to re-enter work. Ways also need to be found to help manage the transition from unemployment to work over a longer period of time. For example, the phased withdrawal of benefits over a longer period of time following acceptance of a job offer would reduce the risk associated with the loss of benefits faced by those re-entering the workforce.

Reform will not only mean making it easier for companies to transform. It also means taking action to improve people’s ability to transform and cope with rapid change. Workers’ capacity to adapt to change has to be improved as the industrial age turns into the global age, where life-long employment is becoming a thing of the past. Part of a positive prospectus for modernisation is the idea that in exchange for granting more flexibility in dismissal rules, employers are encouraged more to invest in people (lifelong learning, training, etc.). Businesses are flexible when creating jobs, but are restricted when dismissal is necessary to remain competitive.

To build such integrated "flexicurity" strategies, Member States need to improve their capacity to learn from each other. Replicating individual measures is a complex exercise but differing national systems should not be used as an excuse for avoiding looking elsewhere for good practice.

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 fully active working life?

Up to date and relevant skills are central in helping individuals and organisations through transitions and promote upward mobility throughout working lives. Particular attention should be focused on identifying and providing effective incentives to individuals and business to engage in lifelong learning.

EuroCommerce believes that building a more skilled Europe requires a partnership involving all levels: EU, national governments, business, unions, education and training providers and individuals.

a] Member States have a responsibility to deliver basic standards of literacy and numeracy. Despite improvements in recorded performance in schools, we find too many recruits who lack in basic skills. This needs to be tackled within state education systems as a matter of urgency.

b] More still needs to be done to ensure that further education qualifications produce skills that employers value. We also believe that initiatives led by employers themselves, where appropriate, should be recognized by Member States as being of equivalent status. This is even more important given the lengthening of working lives and the need to keep skills relevant via training.

c] Management education in the US is a huge advantage for US business and the US economy. We urge the Commission to introduce a strategy to ensure that the EU becomes a world leader in this area.
d] Ways need to be found to incentivise smaller businesses to increase access to lifelong learning. Funding should be targeted to cover the costs of learning provision and to enable small businesses to fund workplace cover for those employees absent on training programmes.

The Social partners, EuroCommerce and UNI-Europa Commerce, want to take up their share of responsibility and agree to support the implementation of a European Commerce Qualification (ex-BeQuaWe) vocational education and training programme, including the test and certification functions, within the framework of their European social dialogue for commerce.

b. Uncertainty with regard to the law

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?

New EU definitions and rights do not appeal because the labour market models are so different across the EU.

Attempting to introduce single European definitions risks the unintended consequence of reducing options available to individual employees and creating complexity for employers. Temptation to introduce a “single model” at European level for the sake of bureaucratic tidiness should be resisted.

For good reasons, almost all Member States have left it to their courts to define what makes an employee – thereby enabling appropriate consideration and flexibility to consider all aspects and make appropriate decisions on a case-by-case basis.

Claiming that one European-wide statutory definition of “employment relationship” could be created that adequately copes with the many forms and variants of modern working life, is unrealistic. Worse, it would lead to masses of unfair results. Complex multilayer variants cannot be measured by coarse, inflexible yardsticks.

In particular, EuroCommerce would like to stress the importance of learning from the experience made with (abortive) German 1999 – 2002 Self-Employment Promotion Act (Gesetz zur Förderung der Selbständigkeit) of 20 December 1999. The Self-employment Promotion Act introduced a legal presumption that a self-employed person is an employee if two of the following 4 criteria were fulfilled: no own employees; working regularly for only one principal; work typically performed by employees; no visibility of the entrepreneurial activities in the market. The impact on the German unemployment rates was considerable (the result was that individuals were deterred from setting up their own business or working in a freelance capacity) and the legislation was subsequently repealed. This 1999-law clearly failed and should in EuroCommerce’s opinion not be seen as a good example. Given the importance of job creation to Europe’s competitiveness, similar errors must be avoided at European level.
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?

EuroCommerce would like to clarify the notion of “worker” as raised in the paper and considers that the reference to “workers” can be seen as all people working under whatever form of working arrangements.

All workers are covered by existing health and safety and social security regulation (such as maternity, paternity and sick pay), working time provisions, national pay agreements and/or minimum wages (where they exist). Part-time workers have the same rights as full time workers on, for example, access to pensions and bonuses and fixed-term workers must also be treated in the same way as compatible permanent employees.

If some of the terms and conditions of traditional work contracts are extended to all contractual relationships and some workers will loose the ability to work in a flexible way to suit their lifestyles, companies also will be prevented from responding to changing competitive demands:

E.g., it is not justified to impose onto companies, employer-like obligations but denying them employer-like rights, regarding control, supervision and direction rights.

E.g., if an independent contractor is not by contract exclusively bound to one company, it is not fair to put that company under a set of employer-like obligations in respect to such a contractor. A contractor who voluntarily decides to neglect seeking additional customers but focuses on one company, should not be disincentivised from seeking his business elsewhere. Putting that company under additional cost and restriction such as extended termination periods fails to provide individual entrepreneurs with the incentives to grow their business.

E.g. it does not make sense to provide minimum notice periods for freelancers who have been entrusted with a certain job or performance of one or more defined projects and whose contract then - naturally - ends with the completion of the assigned task.

E.g., it is especially not justified (nor possible) to grant vacations to freelancers and independent contractors when such persons are not owing their work in a time-related way, nor are measured, controlled, or paid according to time. Why should a freelance programmer, graphic artist, etc., working at home and delivering a completed software/ media solution, being paid for the result, be granted vacations by the company buying the software/ advertisement? The person maybe has worked 4 or 5 days out of a month for the owed and delivered final product, maybe only one day, maybe 20 days. The company has no clue (and has no control) to that point.

E.g. the fixed term work framework agreement sets out the general principles and minimum requirements relating to fixed-term work, recognising that their detailed application needs to take account the realities of specific national, sectoral and
seasonal situations. It illustrates the willingness of the Social Partners to establish a general framework for ensuring equal treatment for fixed-term workers by protecting them against discrimination and for using fixed-term employment contracts on a basis acceptable to employers and workers.

c. three way relationships

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”?

There should be a clear distinction between temporary agency personnel and subcontractors. They are not the same thing and should not be categorised as such: while temporary agency workers are deployed in the business organisation of the user enterprise, employees of the provider in case of subcontracting are not.

Sub-contracting, micro-enterprises development, temporary work agencies and outsourcing all have legal frameworks that function effectively and are critical components of the modern labour market.

Temporary agency work can also have benefits for individuals, enabling them to work flexibly when they want to, or gain experience in a specific sector.

Temporary work is not a type of contract but a form of work itself. Agency workers can be employed by the agency through different types of contracts. The genuine nature of the relationship between the worker, the agency and the user undertaking, being a triangular relationship, should not be denied.

In this triangular relationship between the agency, the temporary worker and the user undertaking, the concept of comparable worker is inadequate. Comparability with a worker of the user enterprise is only justified for certain elements, notably health and safety which must be guaranteed in the premises of the user enterprise and which cannot be controlled by the agency. It might also apply in case of infringement of discipline, confidentiality or functioning rules of the user undertaking.

Therefore, all workers rights must be protected by the contract of employment that they have with the agency. As a result of its supervision task, the user undertaking should only be concerned by issues related to health and safety, discipline, protection of confidentiality and training requirement essential to carry the work out in safe conditions.

The reason companies make use of temporary agency personnel is a commercial one, not an employment one. Companies reach a commercial arrangement with an employment agency whereby the employment relationship rests with the agency.

EuroCommerce believes it is impossible for the employer to monitor multiple contracts or to control the number of hours when the employee has more than one employer. This control function is up to the member states.
10. **Is there a need to clarify the employment status of temporary agency workers?**

There is no need for clarification. The employment conditions of agency workers employed under indefinite contracts should in all cases be determined by the employment agency.

A principle of non-discrimination towards temporary workers should only be based on an equal treatment and should be guaranteed through comparing comparable agency workers, the agency being the genuine employer of the temporary worker.

d. **Organisation of working time**

11. **How could minimum requirements concerning the organisation 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 organisation of working time should be tackled as a matter of priority by the Community?**

EuroCommerce firmly advocates that working time should be calculated on a revolving 12-month basis. The Commerce sector is particularly subject to seasonal peaks, which may be better managed if it was thus calculated in this way. This should also introduce more flexibility and give more freedom to workers during periods where there is less activity.

The possibility should also be given to companies negotiating working time arrangements with individuals to find the solution best suited to their personal needs, keeping the freedom of opting for one or another solution as part of their individual contract of employment.

e. **Mobility of workers**

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 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?**

There is no need for an EU wide definition of workers; the competence rests primarily at national level. Many EU Directives and the European Court of Justice refer in their definitions to national law. A base “floor of rights” exists across the EU to protect the welfare of workers.
Enforcement issues and undeclared work

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?

It lies first and foremost in the hands of the national authorities to ensure effective enforcement of the existing Community labour law as transposed into national legislation. However, we consider there is a role for the EU to play in facilitating the exchange of experiences between national labour inspectorates as done already.

EuroCommerce welcomes the facilitation through the European Social Fund (ESF) to grant financial support for activities of capacity building in relation to the enforcement of legislation in convergence regions.

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

EuroCommerce indeed agrees on the need to combat undeclared work but this can best be dealt with at national level. Combating undeclared work is a question of enforcing existing national legislation.

E.g. in Finland and Germany, the governments strongly supervise working life and working conditions.

We also believe that more need to be done to understand and remove the incentives that drive both individual employees and a small number of unscrupulous employers to offer undeclared work.

We also agree on the need to create the conditions that will encourage the transformation of undeclared work into regular activities. This will largely depend on the reform of tax/benefit systems. By contrast, regulatory measures are not the appropriate way to achieve this, as undeclared work, by definition, consists in disregarding regulation. On the contrary, one should take a critical look at the regulatory framework, remove elements, which have the undesired effect of increasing undeclared work, and then ensure effective implementation of the new rules.