Response to Green Paper on Modernising labour law to meet the challenges of the 21st century


By Homeworkers Worldwide (UK) on behalf of European Homeworking Group

a. Introduction

This response to the Green Paper is based on experience working with homeworkers, and to some extent other informal women workers, in Europe for the last twenty years. The European Homeworking Group brought together a number of people working on the topic in the early 1990s. Further work was done around the adoption by the International Labour Organisation (ILO) of the Convention and Recommendation on Home Work in 1996. Following this, Homeworkers Worldwide (HWW) has extended its work to countries in the Baltic and Balkan region, now included within the European Homeworking Group, as well as Turkey.

The main focus of work with homeworkers in many countries of Europe has been on dependent piece-rate workers, who are supplied with work by an intermediary, agent or employer. They carry out work under specific instructions and are not involved in the design or marketing of the products. This form of employment is often seen as self-employed work, but in general is disguised wage employment. In most cases, the main difference between the homeworker and her equivalent factory worker is that the place of work is the home. However, wages and conditions are usually inferior and employment often takes place informally, outside formal systems of social and employment protection.

This form of employment had traditionally been used in manufacturing industries to retain skilled women workers, particularly those with young children. More recently the increase in homework has been linked to decentralisation of production, the growth of just-in-time patterns of work and demand by companies for flexibility.

Homework has been found in most sectors of industry, wherever there are labour-intensive processes, for example, garment and footwear assembly; sorting and packaging; leather work; electrical and electronic assembly; print and paper products and in rubber or plastics. Recently there has also been an increase in homework in white-collar sectors such as data-processing and marketing, as well as in some service and professional sectors.

In this type of work, it is often difficult to identify an employer. Employment relations are informal and can change frequently. Chains of intermediaries and subcontractors may help to disguise the true nature of the dependent work. But the main issue, as far as rights and responsibilities are concerned is identifying the employer.

There is another group of homebased workers who appear to be self-employed, or own-account workers. Usually there are degrees of economic dependence among these workers with some being closer to the piece-rate dependent workers in the sense that they are economically dependent on traders or intermediaries for sales and
marketing of their products. While some may be genuinely independent, for example, making food products or handicrafts, others may depend on intermediaries for designs, supply of raw materials, and even credit, as well as sales.

Even those who are genuinely independent are different from small business people. They rarely employ other people, or invest large sums of money. Their income is minimal, often equal or less than that of piece-rate workers. Many women are engaged in this form of employment and it needs to be differentiated from highly skilled professionals who are in a position to bargain for professional rates for their work and and genuine small businesses.

Many women combine the different forms of employment, depending on what is available at different times of the year, or depending on their family situation. Hand knitters, for example, may work for companies through their agents and at other times produce work for neighbours and friends or local market stalls.

It is also common in rural areas of Europe, for women to combine different occupations at different times of the year. They may, for example, do some agricultural waged work while at other seasons, they produce sweets or local food products for festivals and sale in their local community and at other times do industrial piece-work brought to the villages by intermediaries.

Since much homebased work is irregular and seasonal, it does not fall easily into traditional employment patterns, based on one employer, possibly for a lifetime. The majority of homebased workers are women, often from very poor communities with a high proportion of male migration. Women left behind to take care of their families, have little alternative but to accept whatever work is available and little possibility for negotiating better terms and conditions.

**Increase in Homework**

There are a number of reasons for the increase in homework both from the employer’s and the worker’s viewpoint.

From the point of view of the employer, homeworking is usually linked to subcontracting and scaling down of manufacturing capacity in order to respond flexibly to the demands of retailers or end-user companies. The risks involved are passed down the chain to smaller companies, who then often pass them on to homeworkers in the form of irregular employment, low wages and poor conditions.

Over the last twenty years, much manufacturing industry has moved out of Northern Europe. In the 1990s, the EHG highlighted the extent of homework in Southern European countries, such as Greece, Italy, Spain and Portugal. The mapping programme identified homework as a new form of employment in the Balkan countries, such as Bulgaria, Romania, Serbia and Macedonia.

In all these countries, since 1989, there had been a collapse in formal employment and particularly women had been forced to accept many different forms of irregular employment such as homework. In Bulgaria and Romania, in particular, there has been extensive subcontracting, often through Northern Greece, leading to chains of
production within which informal employment in workshops and homes proliferated, particularly in garments and footwear.

Whereas ten years ago, European companies were subcontracting work to countries outside the European Union, since the accession of many new countries, this is now within the European Union and raises issues of establishing common rights and protection for workers. Other work is subcontracted outside the boundaries of the EU, including Turkey and North Africa; or to South and East Asia.

As far as the dependent piece-rate worker is concerned, the adopting of subcontracting has led to a deterioration of conditions along the chain of production. Where chains are crossing national boundaries, it is important to look at ways of protecting workers all along the chain particularly those working informally, whether they are based within or outside the European Union.

There are other informal workers, who may not be part of subcontracting chains, involved in homebased production and processing of agricultural or natural products who although not piece-rate workers are producing for global production chains. Examples in Europe include women collecting mushrooms or herbs growing wild, processing them and selling them to intermediaries for large companies in Western Europe and those doing homebased processing of food products. These women often fall into a category of economically dependent rather than genuinely self-employed.

General Comments

We welcome the opportunity to have a public debate in the EU about labour law and other forms of social protection and any changes that need to be made to ensure that all workers are covered by basic minimum standards.

As far as homeworkers are concerned, they have for a long time made up a growing workforce of flexible workers. However, this flexibility is mainly on the employer’s side and homeworkers have received little protection and few benefits. There is little or no recognition on their contribution to the economy.

From our experience, there is already a growing divide between the formal and informal workforce, with homeworkers making up one part of a workforce that is excluded from many rights taken for granted by those working in a more formal, organised workforce.

Our basic position is that minimum employment and social protection should be extended to all workers, whatever form their employment takes. This should not be at the expense of the rights of the formal workforce. However employment and social protection does need to be adapted to the realities of the forms of employment today, since many of those who work in non-standard ways are at present excluded from basic rights.

There is a need to bring together systems of labour law, social insurance and other benefits. At the same time, standard systems need to be adapted to be more flexibly applied for more flexible workers.
From our experience, particularly since the enlargement of the European Union, there is already a highly fragmented labour market, not simply a two-tier system. Those enjoying permanent, full-time employment with an organised workforce are becoming fewer. There are many others who work in many different arrangements and relationships not generally covered by full protection. There are also large numbers of migrants, who in addition to other issues, may be undocumented but who still work and make an important contribution to the economy of the EU, some of them in the form of homebased work.

By its very nature, informal work including homework, is difficult to track and include in official statistics. It is also highly mobile. Since many women take up homework from lack of alternatives rather than through a positive choice, changes in the labour market may affect the numbers of homeworkers available, particularly since it is generally so low paid. In the 1990s, for example, employers in leather footwear in Italy remarked on a shortage of skilled labour for the sewing of uppers. On the other hand, in some sectors particularly garments, employers can change their suppliers from one season to the next. Work that at one time is sourced within one country can be switched elsewhere, either within or outside the European Union. There is therefore an urgent need for more transparency and accountability concerning supply chains.

**Existing Employment Law for Homeworkers**

The situation as far as employment law covering homeworkers varies from one country to another within the EU. At one extreme, there is no specific law for homeworkers e.g. in UK and Spain, although in theory they may be covered by general employment law. At the other extreme, there is comprehensive specific legislation, e.g. Germany, Italy, France or Romania.

The reality for most homeworkers is that they are working outside the legal framework, if it exists. There are a number of ways in which this operates. Legislation may not be adequately implemented, as for example in Portugal where there is a specific homework law. In countries where homeworkers may be covered by general law, it may be difficult for them to prove their employment status, as in the UK or Spain. In some countries, an intermediate status of ‘worker’ has been introduced which entitles homeworkers to some protection. This is sometimes difficult to establish. In other cases, standard employment law is designed to cover permanent full-time employment and bring few benefits to homeworkers who may have irregular work and change employers often.

The result is that only a minority of homeworkers, in countries such as Germany, the UK or Italy, enjoy the benefits of employment and social protection. The majority have a cash income, usually well below minimum or average earnings, only when work is available.

For those who work genuinely on their own account, or combine this with piece-rate work, the situation is generally worse. In some countries, such as Portugal and some of the Balkan countries, they are treated as though they were small businesses. Sometimes registering their work involves a high level of taxation regardless of the level of their earnings. A similar situation exists for those who combine different
kinds of work, for example agricultural work with homebased work, but do not work in one occupation for all the year.

In some European countries, the unclear status of homebased workers also means that they are excluded from the formal trade unions, some of whom do not accept membership of those who are deemed to be self-employed.

In Madeira, Portugal, a unique situation exists as a result of the union organisation of homeworkers over the last thirty years. Specific laws have been introduced covering homeworkers in the embroidery sector on the island and union organisation ensures the implementation of the law. This is an example of standard employment protection being extended to cover the specific situation of homeworkers as a result of consistent union organisation and representations.

**Question 1: What would you consider to be the priorities for a meaningful labour law reform agenda?**

Labour law should be extended to cover all workers whether or not they are directly employed in a formal enterprise. It needs to be adapted to include those workers who are most flexible, particularly homeworkers, even when they do not have permanent, full-time contracts. There should be a minimum floor of rights for all, including employment and social insurance benefits, adapted to a flexible workforce.

The onus of proof of who is a worker should be on the employer, not the worker and the definition of worker should be inclusive so that those on the margins are included not excluded. Rights should not be dependent on permanent work so that they can be applied to those working on short-term contracts, for different employers or in different occupations.

There should be minimum standards throughout the European Union, to ensure that all workers have basic rights, such as minimum income, health cover and pension rights. This could ensure a move towards more equality rather than the opposite tendency which is towards greater segmentation and hence difference.

**Question 2: Can the adaptation of labour law and collective agreements contribute to improved flexibility and employment security and a reduction in market segmentation? If yes, then how?**

At present homeworkers are extremely flexible so that when there is no work they have no income, let alone benefits. They have no employment security. They are also often flexible in terms of how much work they do, at what hours, and with what deadlines.

Labour law can be adapted to improve the terms of this flexibility, for example with rights accumulated through different employment, rather than only through a permanent contract. At the same time, social insurance and security schemes need to be made more flexible and less dependent on permanent employment or qualifying periods.
Homeworkers in a particular sector, for example, can be registered and contributions can be collected from the sector as a whole rather than individual employers, enabling rights from separate short-term contracts to be accumulated by the homeworker.

Collective agreements have an important role to play in ensuring that realistic improvements are negotiated for those working in flexible work arrangements, either directly for a company or indirectly through subcontracting.

**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?**

There is some evidence that subcontracting particularly across borders to lower-cost countries reduces the incentive for small companies to upgrade and increase productivity. For example, since the changes in Eastern Europe, many small companies in Greece now subcontract work to the Balkan countries such as Macedonia and Bulgaria. Wage costs in these countries are estimated at one quarter of those in Greece, and as companies subcontract further afield more and more manufacturing is moved out. The work provided by such arrangements is precarious and mobile.

**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?**

At present there is too big a gap between those on permanent contracts and those working in non-standard patterns, with homeworkers being an extreme example of this. If flexible forms of work can be included in more flexible forms of employment and social protection, this will help to close the gap.

Existing patterns of employment and social insurance schemes assume full employment or no employment. The reality for many homeworkers is that they have some employment some of the time and may do different kinds of work e.g. agricultural work at different times of the year. If work is declared, they find themselves losing benefits, and subsequently when work is stopped, also find themselves without work or income. This needs to be reversed so that there is an incentive to declare the work through an accumulation of rights and benefits.

**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?**

Employment protection needs to be extended and adapted, not reduced, in order that those at present not covered are included in a way that ensures real benefits to them. This needs to be designed in such a way that underemployment is taken into account
rather than based on the dichotomy between employed and unemployed. This would benefit large numbers of women, particularly those with caring responsibilities, who tend to take up more flexible forms of employment to fit in with these other responsibilities. Active labour market policies and training opportunities need to take full account of women’s caring role.

**Question 6: What role might law and/or collective agreements negotiated between 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?**

The law and collective agreements need to take into account the reality of many women’s working lives. The majority of women have responsibility for unpaid family work which leads to a varied paid employment pattern throughout their lifecycle. Ways need to be found to ensure that informal and flexible work patterns incur more equal benefits for women and at the same time provision needs to be made for childcare, care of elderly people and maternity.

In some parts of Europe, women are less mobile than men due to the need to cultivate land as well as family responsibilities. Conversely, women make up an increasing proportion of migrant workers and a regularisation of status is needed for all migrants in order to prevent extreme forms of exploitation and enable migrant women to take up better forms of employment.

**Question 7: Is greater clarity needed in Member States’ legal definition of employment and self employment to facilitate bona fide transitions from employment to self-employment and vice versa?**

There is a need to establish a basic floor of rights and protection for all working people whatever the employment arrangements. Traditional definitions depend on an outdated model of permanent employment, often lifetime, with one employer. The reality is now much more complex, with many different employment arrangements, sometimes crossing borders both within and outside the EU. There should be an assumption of basic rights for all working people, taking account of times of full employment, underemployment and seasonal occupations, and unpaid caring responsibilities or subsistence farming.

Changing employment relations have partly been recognised, for example in the UK by the intermediate concept of worker, with fewer rights than employees, and in the discussion of those who are economically dependent. Economic dependence however is still seen as dependence on one employer. The reality for many is multiple employment within either a year or over a lifetime.

The challenge is to develop a concept of paid employment and worker which is inclusive rather than exclusive. It should also include those who are own-account, without an identifiable employer, but are not in business. This is an important and growing category of low-paid workers, predominantly women.

**Question 8: Is there a need for a ‘floor of rights’ dealing with the working conditions of all workers regardless 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?

There is a need for a floor of rights covering all workers regardless of their work contracts and inclusive of those who switch occupation at different times. For example, in many rural areas of Southern and Eastern Europe, women do agricultural work as well as industrial homework within one year. They need to be able to accumulate rights across different contracts and occupations.

Statistics quoted in the Green Paper and elsewhere show how the current trend is to ‘define’ workers as being outside employment and social protection thus creating greater inequality in the labour market, particularly for women, young people and migrant workers. Some calculations put the number of undocumented workers in the UK as one tenth of the workforce.

This tendency may lead to job creation but does not take account of the quality of the jobs thus created. An equalisation of rights and benefits would counteract this trend.

Such measures need to be taken across the EU as a whole to stabilise some of the relocation and mobility of production. It should also be noted that there are many factors leading to work moving from one country to another, with the cost of employment making up one factor among many. Other factors include tax and tariff regimes, proximity to markets, workforce skills and transport or overhead costs.

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 subcontractors? If not, do you see other ways to ensure adequate protection of workers in ‘three way relationships’?

Homeworkers sometimes work directly for an employer or manufacturer. However, it is more common for homeworkers and other informal women workers to be found as part of a subcontracting chain, involving intermediaries and agents, sometimes crossing national boundaries. This is well documented particularly in the fashion industry for garment and footwear production.

Such production chains are often global. Many retailers and other large companies have now often accepted responsibility for conditions not only in their subsidiaries but in the whole of their supply chain, including for subcontractors. There are a variety of codes and agreements which aim to cover the whole of the chain, wherever production is taking place.

There is a need to strengthen this through introducing joint and several liability for conditions in subcontracting chains. While there are some problems implementing this internationally, it could be done within the European Union which has accepted the principle of legally binding directives for all countries.

10. Is there a need to clarify the employment status of temporary agency workers?
In some countries, there are specialised homework agencies which distribute work to homeworkers. Where this is the case, joint and several liability would ensure that both the main company and the agency are responsible for conditions for agency workers, who should be treated on an equal basis.

11. How could minimum requirements concerning the organisation of working time be modified in order to provide greater flexibility for both employer and employees, while ensuring a high standard of protection for workers’ health and safety? What aspects of the organisation of working time should be tackled as a matter of priority by the Community?

One of the main advantages for employers in using homeworkers is their flexibility of working hours. It is common for homeworkers to do rush jobs, working long hours at short notice, while at other times be waiting for work. There is a need to regulate the amount of work put out to homeworkers to ensure that they are not working excessive hours and are able to take holidays. This can be done by ensuring a fair piece rate and calculating work loads accordingly.

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?

Homeworkers usually take up this form of employment since they are not mobile. However subcontracting across national frontiers is common and a convergent definition of worker and consequent rights would ensure more equal conditions wherever the homeworker is employed. Joint and several liability would ensure responsibility along chains crossing frontiers, but there is still a need for common rights in different countries.

There is also a need for regularisation of all workers living within the EU. Since there are large numbers of undocumented workers within the EU, homework is one option for some of them given its hidden nature. Regularisation of status would lead to greater choice of employment.

13. Do you think it is necessary to reinforce administrative cooperation between the relevant authorities to boost their effectiveness in enforcing Community labour law? Do you see a role for social partners in such cooperation?

There would be a need for more cooperation between relevant authorities to enforce labour law. However, before this there is a need for greater consultation with a variety of social partners in designing new systems of employment and social protection particularly for informal women workers.

Given the hidden nature of much informal work, including homework, it is important that consultation takes place with a range of social partners, not only formal trade unions. The views of homeworkers can be represented through their own associations or other organisations such as rural organisations as well as trade unions. New
systems of employment and social protection should also be designed in such a way that they are implemented through a decentralised, democratic model which directly involves organisations of homeworkers as well as those in close touch with them such as rural or other community organisations.

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

The priority should be to design systems which bring informal work into systems of employment and social protection which bring direct benefits to those currently working outside this protection. Most people would prefer employment that is regular, pays a living wage and carries with it benefits such as health care, maternity and pension rights etc. Once people are entitled to real benefits, they will take advantage of them. In this context, it is important to develop local accessible bodies responsible for the implementation of such systems to ensure participation by all workers and encourage people to regularise their work. A system which concentrates on ‘policing’ undeclared work tends to drive this work further underground and make it more difficult for workers to claim their rights.

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