Green Paper on Labour Law
DG EMPL/F/2
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Q1. What would you consider to be priorities for a meaningful labour law reform agenda?

One of the issues the labour law reform agenda should misses out is considering the changes and consequences of globalisation and technology (the internet), is the special position of an increasingly important group of self-employed workers, that is the people working in the cultural and audiovisual sector, amongst them screenwriters.

Some screenwriters work on mostly flexible labour contracts for relatively big producing companies. Their earnings are solely based on their income as writers, just like the wages of an employee. However, the majority of screenwriters though are self-employed workers and are paid for their work as writers but are in fact (for a large extent) dependent on the income derived from the copyright of their work. For the right that their work is to be filmed, or used in any other way. The income derived from copyright is based on (fair) remuneration of their work, instead of it being based on an activity.

As the Federation of Screenwriters in Europe (FSE), being an association for all European screenwriters, we take this opportunity to explain the needs of this particular group of mainly self-employed people. Most of our arguments count though for all kinds of self-employed workers who can be defined as authors earning part of their income from copyright.

Screenwriters work as stated already seldom work as regular employees. A great deal of the work of screenwriters is based on projects and therefore is temporary (a script for a feature film, television or radio). They form a distinct group of the so-called self-employed workers and workers with flexible labour contracts to which the green paper refers to. In fact to whose interests the green paper calls for reforms. People working in the cultural field in general hold a specific position and are very often working as self-employed workers. The size and importance of this group is growing rapidly due to the developments in new technology, especially the internet.

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National governments have recently discovered and acknowledged the economic value of culture and the economic importance of this sector. For instance the Dutch Ministry of Economic Affairs in cooperation with the ministry of Education, Culture and Sciences launched a big campaign to introduce the concept of the “cultural self-employed worker”, in a publication called *Culture and Economy: Our creative capital*. In this publication it is mentioned that the amount of workers involved in the culture sector is bigger than for example in the agriculture, the chemical industry and the steel industry (see p.013, *Cultuur en Economie; Ons creatief vermogen*, edition of Ministry of Economic Affairs and Ministry of Education, Culture and Science, nr 05 OI 30, oktober 2005).

The EU itself has done several investigations on the economic value of creativity, directly based on the Lisbon agenda and its goals. According to one such recent EC study (DG EAC – 22.11.2006, “The Economy of Culture in Europe”) the share of self-employed workers in the culture sector is more than twice as high as the EU average in regard to total employment (page 91). According to this study the culture sector is made up of a great many small business, a few medium size employers (e.g., theatres) and a handful of powerful television broadcasters and multimedia firms. In the executive summary the report states that the role of the culture and creative sector is largely ignored. The study presents aims and solutions to remedy this situation with providing statistical tools. The report's findings show how culture drives economic and social development as well innovation and cohesion and moreover promotes European integration. It is stated quite rightly that not everything that counts can be measured and everything that can be measured counts (quote Albert Einstein). Very true.

What can be counted though and should get much more attention is the average income of the people providing this creativity: the creators. These creators, amongst them screenwriters, are often underpaid, being one-man 'companies', or independent contractors (self-employed workers) with very little social security to fall back on when needed. It is very important that creative authors, specifically screenwriters can negotiate their interests by collective agreements, which include prices and tariffs so that they can have a decent average income. Self-employed workers do not have unions like employees, but often they are organised in associations. These associations should have the same possibilities as unions and their collective agreements should have the status like those made by unions.

If the needs of self-employed workers in the creative sector, like screenwriters, are not taken care of, this surely will have a negative effect on creativity and innovation in due time. And therefore also have a negative effect on the economy. It is in everybody's interest that the rights and income of self-employed workers in the creative sector be improved by the reform of labour law to which this green paper addresses.

Q2. 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?

The FSE sees the need that the position of self-employed workers as screenwriters should be strengthened and their position should be more in line with the position of employees. Therefore it is necessary to legally enforce the position of screenwriters (authors) and to make it possible to make collective agreements with the users (i.e., exploiters) of their work, such as producers and broadcasters.

Reform of labour law should make it possible to make collective agreements, in particular agreements on tariffs. This can improve employment security and reduce labour market segmentation.

This should not mean that the position of employees should deteriorate. FSE agrees and supports the view of the European Commission in the Green paper that this should be prevented; indeed the development of “insiders” and “outsiders” in our society should be stopped. This means more and better minimum provisions for self-employed workers, and improvements in the accessibility of the existing...
provisions in the field of social security and pension funds for self-employed workers which are currently only available to employed workers. A legal provision is therefore needed to make it possible to have collective agreements for the associations of specific self-employed workers with the same kind of status as collective agreements made by employees.

Q3. 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?

Existing European and national competition law and/or the interpretation of it by national competition authorities is hindering self-employed workers like screenwriters from negotiating fair remunerations and tariffs by collective agreement with producers and broadcasters. Self-employed workers in certain countries, like the Netherlands, and Ireland are challenged by national competition authorities who are denying them the right to collective bargaining on prices and tariffs on the basis of national and/or European competition law. Self-employed workers are viewed as ‘companies’ and should be competing between each other. Operating collectively is considered as forming a cartel which is illegal. Consequently collective agreements that mention wage rates, royalties, etc, in for example the Netherlands had to be adjusted under pressure from the national competition authority.

The FSE considers this interpretation unfair, even unjustified, and far beyond the reality that screenwriters work and live in. It is wrong and shows a lack of understanding and treats screenwriters (e.g., screenwriters, playwrights, film directors, performing artists, musicians, etc) as ‘companies’ trying to sell a regular “product” for various reasons. It should be mentioned that, for example, Germany does not see any problem with authors negotiating collective agreements including tariffs and royalties. The Urhebersgesetz of 2002 makes it clearly possible for authors to negotiate and even demand a fair/equitable tariff. And if authors and the producers, publishers, etc, who exploit their work do not succeed in negotiating such tariffs the law even provides for the intervention of a mediator to help reach agreement.

Another issue relates to screenwriters who are employed and generally work for big companies, mostly making soap series for television. Because of the huge negotiating inequality between the parties these screenwriters are often forced to sign quite bad contracts without any provisions and / or guarantees for future work, social insurances etc. This should be taken into consideration in the plans for reform of labour law (see also under Q.2).

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?

We mentioned the need for better provisions in the field of pension funds, disability insurance, etc. FSE feels that other organisations are better equipped to answer this question in detail.

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?

FSE feels that other organisations are better equipped to answer this 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?

In the case of self-employed creators, the law should encourage and facilitate fair collective bargaining. Training schemes could be negotiated in collective agreements.

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?

See our answer under question 1. Otherwise FSE feels that other organisations are better equipped to answer this 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?

There is no need for a European, new “floor of rights” for employees and self-employed workers. A “floor of rights” will have to be very general and is therefore not useful as such. Especially as the differences to the rights of (self) employed workers are so huge between the member states there is not really any advantage to be expected. On top of that there are justified differences between these two groups of workers and legal reform should take these into account. Screenwriters in particular would probably not gain anything by introducing a European “floor of rights”.

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”?

Trying to clarify multiple relationships is of course difficult, however, in the case of art, and works (e.g. script) are often traded between third parties (e.g., a screenwriter has a contract with a filmmaker to write a script which the filmmaker then turns into a film he then sells to a broadcaster etc). It would indeed be necessary for the law to stipulate that premiums for social insurances, pension funds, etc, would be paid by a certain party and this would be checked by the authorities.

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

FSE feels that other organisations are better equipped to answer this 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?
For self-employed workers, and in this case independent creators, deadlines can often be absurdly short, meaning that creators literally need to work day and night for several days to produce the ultimate deliverable that should in practical terms need a much longer time span. Therefore it would be good that in the reform of labour law this situation should be dealt with, by law and by collective agreement.

For employed workers FSE feels that other organisations are better equipped to answer this question.

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?

FSE feels that other organisations are better equipped to answer this 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?

National law and enforcement agencies should co-operate more, especially in publicising and promoting best practices and in encouraging collective agreements. When disputes and disagreements occur, some kind of standard arbitration procedure could help in resolving conflicts. Also the courts should rule against unfair contracts which undermine or strip self-employed workers of their employment rights, for example contracts that oblige artists and creators to sell their rights of authorship.

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

FSE feels that other organisations are better equipped to answer this question.

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