Introduction

The British Chambers of Commerce (BCC) comprises a national network of quality accredited Chambers of Commerce, all uniquely positioned at the heart of every business community. Currently over 100,000 businesses benefit from membership of 56 chambers in our accredited network from growth orientated start-ups to local and regional subsidiaries of multinational companies in all commercial and industrial sectors and from all over the UK.

At the start of 2005 UK private enterprises employed around 22 million people. Combined these enterprises had an estimated annual turnover of £2,400bn.¹

Small to Medium-sized Enterprises together account for more than half of total employment (58.7%) and turnover (51.1%) in the UK. The very smallest enterprises (0-49 employees) account for 46.8% of employment and 36.4% of turnover.

Thank you for the opportunity to respond to the Labour Law Green Paper. The paper itself covers several issues of interest and concern to our members, in particular:

- Flexibility and its benefits to the economy
- Development of new forms of contractual relationships
- Concept of an EU definition of worker
- Concept of a floor of rights

The BCC considers the reform of EU labour markets toward greater flexibility as a necessary catalyst for delivery on the Lisbon Strategy. Europe faces two key challenges - globalisation and demographic change - and the European Council have set ambitious targets to respond to them:

- An overall employment rate of 70% in 2010 (67% in 2005)
- A female employment rate of 60% in 2010 (57% in 2005)
- An older workers (55+) employment rate of 50% in 2010.

This paper is split into four sections

¹ UK Small Business Service stats for 2005
• The first section examines the economic context in which the debate on the green paper takes place.
• The second section looks at the importance of labour law reform.
• The third and concluding section summarises the BCC position on the Green Paper and outlines our recommendations for future action.
• An appendix is included at the end of the paper which provides a direct response to the Commission’s consultation questions.

Economic context

We acknowledge that the Commission is well aware of the economic shortcomings of the EU, therefore we will not attempt to explore this issue too deeply in this response. However we will highlight some key statistics which we believe highlight the imperative for reform.

<table>
<thead>
<tr>
<th>GDP Growth Forecasts</th>
<th>The Major Economies % Change per Annum</th>
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<tr>
<td></td>
<td>2004</td>
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<tr>
<td>The US</td>
<td>3.9%</td>
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<tr>
<td>Japan</td>
<td>2.3%</td>
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<tr>
<td>Eurozone</td>
<td>1.7%</td>
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<td>Germany</td>
<td>1.2%</td>
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<td>France</td>
<td>2.0%</td>
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<td>The UK</td>
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Poor European growth has been the driver for economic reform in the EU for decades. However, it is the emergence of aggressive global competition from India and China which has exposed the relatively slow pace of change.

Between 2000 and 2005 Chinese total GDP growth has more than doubled from $1079.2bn to $2225bn. This constitutes a real rate of growth of more than 90%. Over the same period Indian real growth has increased by 37.8%.

The case for reform

There is no question that reforming labour markets will be key to unlocking the economic potential of the European Union. Over the past quarter of a century the EU have been reforming product and capital markets to the benefit of European business and citizens – key milestones include:

• The Single Market (SM).
• Increased European spending on R&D.
• The Services Directive.

While there is partial development of national level labour market policies, the future competitiveness of the EU remains in the balance.

For this reason the BCC applauds the Commission for opening the debate on Labour Law and its reform. There is a tension within the Green Paper which reflects that

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2 OECD figures
3 ESPIRIT; Framework programme for research and technological development
4 Andre Sapir Globalisation and the Reform of European Social Models
which permeates many debates on EU issues. There are two distinct voices within Europe: those who believe in flexibility to deliver net economic benefits for Europe and its citizens and those that would see a strengthening of the ‘European Social Model’.

The BCC strongly believe that flexibility can deliver competitiveness and security. We should be thinking less in terms of advancing concepts like ‘flexicurity’ and more in terms of advancing flexibility. Flexibility and security are two sides of the same coin the concept that links them being ‘adaptability’ to the twin processes of globalisation and an ageing population across Europe. Europe needs to adapt and to do so it needs to offer flexibility to its businesses and security to its employees and more broadly its citizens. The BCC believes that in a globalised era security can only be delivered by offering greater flexibility for businesses to meet their labour requirements quickly in response to global change. We believe that employees will derive security from well designed active labour market policies and European economic success, rather than a labour market with low turnover and long term unemployment. Two examples from the UK are offered below.

The UK experience

For UK employers any preference toward an ‘atypical’ form of contract is a reaction against a standard contract model that is rigid and burdensome and makes it difficult for employers to restructure their labour requirements at different times in the economic cycle. The BCC accepts that in comparative terms the UK has a less rigid regime than many Continental and Mediterranean countries; however there remains a considerable degree of inflexibility, particularly around dismissal procedures.

Research conducted by the BCC in 2006 suggests that businesses consider that dismissal legislation has had a negative effect on UK business with a little under a third describing it as very negative. Some 41% of employers identified dismissal legislation as the single piece of most burdensome employment regulation above the minimum wage; maternity/paternity rights; working hour limits; flexible working rights.

In the UK there is a very clear example of how flexibility is benefiting employees as employers are starting to embrace flexible working patterns. There is a clear business case for these practices in terms of staff retention and productivity and here we can see how flexibility can have clear benefits for employees. Flexible working is also an important labour market innovation in the face of an ageing population. Through provision of flexible work and leave arrangements there is a greater chance of encouraging employees with young families to continue in employment and encourage them to remain in the employer/employee relationship.

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5 A misleading concept in itself there is no over-arching European Social Model but those in this group would advocate strict regulation of labour markets and are opposed to structural reforms of EU markets.
6 Ton Wilthagen and Martin Van Velzen The road towards adaptability, flexibility and security
7 we use atypical to reflect the usage in the Green Paper however we do not consider that any from of contract that constitutes as much as 40% of the EU workforce can be atypical
Conclusion and recommendations

For clarity it is useful for us to summarise the key points within the Green Paper and the BCC’s response to them.

BCC’s overarching concern is that while Labour Law and its reform is rightly viewed as a ‘European problem’, the solution in fact requires action on an individual member state level, rather than an EU level. The Commission states that their intention is:

To engage Member State governments, the social partners and other relevant stakeholders in an open debate about how labour law can assist in promoting flexibility combined with employment security, independently of the form of contract, thereby ultimately contributing to increase employment and to reduce employment.

The BCC would argue that too many of the fundamental inflexibilities in the UK surround the standard contract and attendant labour law.

Key points of the Green Paper:

The following are significant points within the paper. We accept that the Commission are not necessarily proposing any of these measures but we thought them worthy of comment.

Flexibility and its requirement for competitiveness
The BCC are in total agreement with the green paper’s calls for greater flexibility and the benefits it can bring for European economies.

Risks posed by new ‘atypical’ forms of contractual relationships
The Commission clearly believes that ‘atypical’ contracts are depriving those engaged in them of employment status rights.

First of all, we make clear that we do not believe that businesses should engage in disguised employment. However, we do believe that EU citizens should have the choice of contractual form that suits their circumstances.

As we discuss above, our concern is that if employers are favouring these arrangements then it is because the traditional contract form is too prohibitive. Any effort to remove these would have an immediate impact for start ups who very often find these forms to be a lower risk means of expanding operations without prohibitive employment obligations. If the Commission wants a return to traditional employee/employer relations then it needs to encourage member states to limit restrictive employment law such as dismissal regulations, to make it easier for employers to manage their labour requirements.

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8 It is the diversity of EU labour markets that would make significant reform difficult at the risk of over-simplifying there at least 4 EU models Continental; Mediterranean; Nordic and Anglo-Saxon.
9 Page 4 Modernising labour law to meet the challenges of the 21st century
Proposals for an EU definition of worker
Diversity of labour market forms makes this aspiration extremely difficult to realise in a uniform manner across the EU. However, it is already occurring at member state level - the UK has a separate definition of worker which is set out in the ‘Success at Work’ report designed to confer certain minimum rights on those on the margins of the labour market within the UK. We believe efforts to harmonise this across diverse economies would not be practical or desirable for employees as much as employers.10

A floor of rights
As above, we cannot see based on diversity of models in the EU how such an approach would be beneficial.

Recommendations

- The Commission to develop a coherent viewpoint on flexibility. The Green Paper vacillates between opposing viewpoints and does not offer unequivocal support to reform with a view to increasing flexibility.

- The Commission to offer encouragement to member states to adopt more flexible practices in respect of labour law whilst concentrating legislative efforts on reducing barriers to product and capital markets.

BCC observations

‘Flexicurity’
The BCC notes with concern that the Commission seem to have accepted the term flexicurity without adequate discussion or debate amongst member states or stakeholders. For example the paper states:

> In particular, a Commission Communication on flexicurity will be presented in June 2007, which will set out to develop the arguments in favour of the “flexicurity” approach and to outline a set of common principles by the end of 2007 to help Member States steer the reform effort.11

It seems clear from this extract that the Commission are sold on the merits of flexicurity. However, as we outlined above we would prefer unequivocal support for flexibility rather than the support of a confused concept which will be unclear to many. We would also question the use of a Commission Communication to advance one concept of future reform so strongly particularly given its strong association with the Nordic labour market model. The BCC are concerned if the Commission’s support for ‘flexicurity’ would result in an assertion of the Nordic model across the EU.

Life long learning
The BCC notes with interest the paper’s reference to life long learning and supporting those outside employment through active labour market policies. We also note that this forms part of the ‘flexicurity’ agenda:

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10 With EU economies at different stages of development you risk offering too much to some EU citizens and too little to others.

11 Page 4 Modernising labour law to meet the challenges of the 21st century
Other policy components of the “flexicurity” approach include life-long learning enabling people to keep pace with new skill needs; active labour market policies encouraging unemployed or inactive people to have a new chance in the labour market; and more flexible social security rules catering for the needs of those switching between jobs or temporarily leaving the labour market.12

Economic dependence
We suggest that the Commission takes a more nuanced approach to ‘economic dependence’. Economic dependence is not necessarily a negative situation for those on commercial contracts it entirely depends on the nature of the relationship between the contractor and their client.

The Commission is clearly using ‘economic dependence’ to describe ‘disguised work’, they are quite different and a clear distinction needs to be made.

The Social dialogue and collective agreements
EU legislation often uses collective bargains as a means to increase flexibility13 however the UK’s institutional structure means that this facility is not available. With more than half of UK employment in the SME sector and less than 20% of those in the private sector unionised the social dialogue model is in no way applicable to the UK14.

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12 Page 4 Modernising labour law to meet the challenges of the 21st century
13 e.g. Working Time Directive affords additional flexibility to those states that can strike a collective bargain between the social partners
14 Small Business Service SME statistics
Appendix A BCC response to consultation questions

Below is the BCC response to the Green Paper’s relevant consultation questions.

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

Flexibility rather than ‘flexicurity’ is the key priority for any labour law reform agenda. The Lisbon Agenda for growth and jobs will not fulfil its potential unless the EU consciously improves labour markets for the drivers of employment growth, SMEs.

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

Collective agreements are not applicable to the UK. Trade Unions have diminishing memberships and the institutional framework necessary for this to work does not exist in the UK in the same way it does in other Member States. Neither is the Social Dialogue at the EU level an appropriate means by which to reach compromise. The Commission (and the EP) should be aware that the Social Dialogue does not represent the interests of small businesses nor the interests of 40% of the EU workforce classed as ‘atypical’.

Labour law at a member state level may well be reformed to deliver the objectives delivered above. However, as we have outlined in the body of our response we would question the need to address segregation through forcing people into a particular category of work. Employees must be offered choice on the contract form that suits their circumstances.

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?

As discussed above collective agreements do not apply to the UK.

Existing regulation certainly does impose a significant burden on business. The BCC’s 2007 Burdens Barometer figure was £55,664bn, - this is the cost of new regulation to business since 1998. Of this figure 73% is EU sourced regulation some £40,357bn\textsuperscript{15}. There is no question that firms, particularly smaller firms, suffer under the weight of this burden. Within a small firm it will be the owner/manager who has responsibility for compliance; this ultimately distracts them from growing their business.

For the regulatory burden to be improved the Regulatory Impact Assessment (UK level) and the EU Impact Assessment need to be applied rigorously using quantified

\textsuperscript{15} BCC Burdens Barometer 2007
costs and benefits. The growing regulatory burden on firms in the UK would suggest that this is not happening. If we take the EU IA system as an example:

- Less than 10% of EU IAs quantifies the costs and benefits to business.
- Only one Impact Assessment (IA) (of the 160 produced 2003-06) quantifies the impact for SMEs. Another 38 identify additional costs but don’t quantify them.
- 98 Impact Assessments don’t consider the cost to SMEs at all.
- Nearly 40% of EU IAs are targeted at non-binding instruments\(^{16}\)

We accept that the process of quantifying impact across the EU is a difficult task. Therefore we recommend that as a first step to addressing this problem member states should be encouraged to align their IA process with the EU’s, although we accept that progress on the better regulation agenda within the EU is partial. This would give the Commission or the Council a basis of quantified impacts with which to make their own EU Impact Assessment.

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?

By permanent and temporary contracts we presume that the Commission is referring to the traditional employment relationship. There are means by which flexibility can be injected into this relationship for the benefit of employers and employees. For employers this means the ability to manage their labour commitments and grow their workforce without restrictive employment regulations which will stifle their ability to deal with changing economic circumstances. For employees this can mean greater control over their working lives through adoption of flexible working patterns (please refer to page 3 above for more details).

5. Would it be useful to consider a combination of more flexible employment protection legislation and a high level of assistance to the unemployed, both in the form of income compensation (i.e. passive labour market policies) and active labour market policies?)

The scenario described in the question seems to be the Nordic ‘flexicurity’ labour market model. The BCC would counsel against any attempt to export precisely Labour Market models across member states. There is a huge diversity of approach within the EU all must be encouraged to be more flexible but in a way that suits the circumstances of their population, institutional structure and economic circumstances (please refer to page 5 above for more detail).

We see the Commission’s role as one for debate and even championing of flexibility but not active promotion of a prescriptive model as we believe this to be wholly unworkable.

\(^{16}\) The Burden of Regulation: Who is watching out for us Tim Ambler, Francis Chittenden, Deming Xiao, BCC April 2007.
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?

Social dialogue is not applicable to the UK or the SME sector for the reasons set out in response to question 2 and the main body of our submission.

We would not see that further legislation, certainly not at an EU level, would deliver any net benefit. Flexibility and the ability of those in the labour market to have a choice over the form of work that best suits them would. This applies to mobility within the labour market as well as skills training. There is a market imperative for training i.e. to ensure that your business is well prepared for the global challenge. Research conducted by the BCC suggests that as many as 84% of employers sourced external training for their employees17.

Movement between different contractual forms is important. Indeed we believe that this diversity of approach to work should be celebrated rather than admonished. It must be remembered that movement from formal employment to a commercial relationship is an important driver for employment growth. Many who choose to become self-employed then go on to start a business and create jobs for others. It is important that this section of the EU workforce are not denied this opportunity.

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?

The BCC is reassured that the Commission acknowledges that any changes should be at a member state level. Any adjustments to legal definitions would need to be evidence based and every alternative option must be explored. The BCC has no wish to allow employers who do operate inappropriately to continue to do so. However, we are concerned that any changes to legal definitions do not capture that great number of the self employed who have chosen that contractual form because it suits their circumstances.

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?

This can only be assessed at a member state level and based on the UK experience BCC would see no need for a “floor of rights”. The UK already has a “floor of rights” i.e. a separate definition of worker ascribing certain minimum rights like a minimum wage to protect those very vulnerable workers. We do not believe that there is a case to extend this any further or for the EU to set its own floor. Ascribing too many rights to self employed status would place at risk the flexibility of this contractual form, which makes self employment commercially viable in the first place.

17 UK Skills: Making the Grade BCC March 2007
10. Is there a need to clarify the employment status of temporary agency workers?

The UK has more temporary workers than any other EU state, over 700,000\textsuperscript{18}. Therefore full parity of benefits and conditions between temporary and permanent workers would raise the cost of hiring temporary staff, making them a much less attractive prospect for employers, and leading to fewer employment opportunities. There would be no circumstances under which it would be useful to equalise these rights and indeed it would greater reduce the flexibility of the UK labour market.

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 organization of working time should be tackled as a matter of priority by the Community?

The UK suffers from less flexibility in relation to Working Time than any other member state because they cannot take advantage of collective agreements. The UK’s labour relations are very different from other member states, an opt out is therefore adequate recompense for this detriment. We firmly believe that the UK would be placed at a significant competitive disadvantage without an opt out from the Working-Time Directive however.

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?

Based on diversity of approach to Labour Markets and expectations of employment within member states. We firmly believe that any attempt to establish an EU definition of worker would be ill advised.

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?

No we do not believe that this would be helpful. However better enforcement of the inter-institutional agreement and therefore publication of correlation tables across member states would make it much easier to monitor the implementation of Directives across the EU.

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

Again, intervention should be limited to individual member states.

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\textsuperscript{18} UK government figures