EU Commission’s Green Paper on “Modernising Labour Law to meet the Challenges of the 21st Century”

Response from EEF, the manufacturers’ organisation, UK
1. EEF is the representative voice of manufacturing, engineering and technology-based businesses in the UK. We have a growing membership of over 6,000 companies of all sizes, employing over 900,000 people. EEF comprises 11 regional Associations, the Engineering Construction Industry Association and UK Steel. We are also the UK member of the Council of European Employers of the Metal, Engineering and Technology-Based Industries (CEEMET), which represents the interests of employers’ organisations in these sectors across Europe.

2. This response is based on consultations with EEF’s regional Associations and member companies, particularly EEF’s Employment Policy Committee.

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**Executive Summary**

**The differences between Member States**

- In an EU compromising 27 Member States it is unrealistic to think that a single labour market model could or should suit them all.

- There may be lessons to be learned from the Danish concept of ‘flexicurity’ and the EU has a role in promoting the sharing of good practice in this area. Further legislation, however, is the responsibility chiefly of Member States.

**Flexibility (Consultation Questions 1-5)**

- The UK’s labour market model balances flexibility and security.

- For manufacturers, the ability to make changes to the size, structure and working arrangements of the workforce is critical to meeting demand and retaining competitiveness.

- Many workers in the UK actually demand flexibility in their hours and contractual arrangements in order to achieve a better work/life balance.

- EEF members do not demand significant or wholesale reform of current employment law in the UK, but they see a need for greater simplicity and transparency in the law.

**Security (Consultation Questions 4 - 6)**

- True employment security comes not from just having employment rights or protection against dismissal. Workers feel truly secure when they know that:
  - a high proportion of those who want to work can find work (i.e. the rate of employment is high);
  - they have the experience, skills and attributes to continue to succeed in their current job and/or to find new work; and
  - they work for an organisation which is profitable and competitive enough to survive in today’s challenging environment.

- Economic, education and active labour market policies are much more effective in promoting employment security than employment rights alone.
Rights of workers (Consultation questions 2, 8 and 12)

- Being able to use “workers” in a flexible way is critical for UK employers, especially those in manufacturing who need the ability to respond to changes in demand.

- It is wrong to typecast all “workers” in the UK as being excluded or exploited. Many are highly-skilled, paid at higher rates than comparable employees and choose to work on “non-standard” contracts.

- We are opposed to national or EU legislation extending full employee status to workers because:
  - Doing so would be impractical or would drive up labour costs
  - It would undermine the flexible way in which our sector engages such workers and so defeat the purpose of recruiting them
  - Workers in the UK are already well-protected by UK employment law
  - It would not deliver true employment security

- The UK’s targeted approach to the rights of workers is the correct one.

Rights of Agency Workers (Questions 9 and 10)

- The EU should not undermine the principle of agency work by bringing in legislation which, in effect, turns it into a standard employment relationship.

- In the UK, there is a need to clarify that the agency bears sole responsibility for any employment rights.

- We are unaware of any issues created by commercial sub-contracting in the UK.

Harmonising the definition of worker (Consultation question 12)

- A standard EU definition of “worker” and “employee” is unworkable, largely due to the differences in Member States’ tax and social security regimes.

- Any concerns with the employment status of frontier workers should not be allowed to dictate the approach throughout the whole of the EU.

Self Employment (Consultation questions 7 and 8)

- The concept of “economically dependent work” is not appropriate for deciding which employment rights (if any) an individual should enjoy. In the UK many individuals who might be regarded as economically dependent are already protected by law.

Enforcement (Consultation questions 13 and 14)

- We believe that the enforcement of labour law generally, and monitoring of undeclared work specifically, is best left to Member States.
Working Time (Consultation question 11)

- EEF believes that the opt-out from the average 48-hour working week must be preserved. Working time should be automatically averaged over 52 weeks.
- The priority in this area is to resolve the issue created by the ECJ decisions concerning “on-call” working time.

Improving and reforming labour law (Consultation question 1 and 3)

- The EU needs to do more to ensure that the principles of better regulation become central to EU employment law. Impact assessments must become structured, meaningful and comprehensive, and greater consideration must be given to the practical implications of ECJ rulings.

Introduction

3. Manufacturing is on the front line of globalisation and EEF members face competition from companies in lower-cost economies to a greater extent than companies in most other sectors. The ability to adapt quickly and efficiently to this changing economic climate is critical for manufacturing companies if they are to remain internationally competitive in the 21st century.

4. Against this background, EEF members welcome the opportunity of having a constructive debate over modernising labour law to meet these new challenges. They particularly welcome the emphasis in the Green Paper on the importance of promoting flexibility to enable them to respond to competitive pressure. They also recognise that this flexibility should be complemented by providing some element of security for employees and workers.

5. While the Green Paper poses some specific questions, we believe that the key themes which lie behind these questions are potentially more significant. In discussions with our members, they have highlighted the following issues which need acknowledging or addressing in any debate on modernising labour law both at national and European level:

- The differences between Member States
- Flexibility
- Security
- Rights of workers
- Rights of agency workers
- Harmonising the definition of worker
- Self-employment
- Enforcement
- Working time
- Improving and reforming labour law
- The role of the European Union (EU)

6. Our response therefore addresses each of these themes directly. Wherever possible, we have also tried to cross-refer to the relevant questions in the Green Paper and include some specific examples from the UK.
The differences between Member States

7. There is much interest in the EU in the concept of ‘flexicurity’ - a term used to describe the Danish labour market model, which combines flexible employment law, generous benefits for the unemployed and a pro-active labour market policy.

8. In an EU compromising 27 Member States, it is unrealistic to think that a single labour market model will suit all of them. There are key differences in terms of economic policy, tax/social security policy, the role of collective bargaining, employee relations history/culture and political ideology. These differences make uniformity impossible, even if it were desirable.

9. For these reasons, we believe that we cannot simply apply the Danish model of flexicurity across the EU. Whilst it undoubtedly offers many useful learning points for other Member States and appears to be working well in Denmark, it would be wrong to see it as the only suitable labour market model. In our view, the Danish model would not suit all Member States any more than the UK model would. Equally, we cannot assume that labour market problems in some Member States are the same as the problems in others or that a solution which is appropriate for one Member State would work equally well in another. For example:

- sectoral collective bargaining is successful and widespread in some Member States but very rare in others; and
- targeted solutions that address specific issues, such as the recent UK legislation on gangmasters, may be effective in the UK but not in other Member States.

10. What Member States can do however, is share experiences about what has worked and, equally importantly, has not worked and develop ideas from sharing good practice. A mechanism for doing so already exists in the form of the European Jobs and Growth Strategy and through the ‘Open Method of Coordination’. We are opposed to a top-down legislative approach being taken to these issues.

11. In the UK, the term “flexicurity” is not widely used or understood. However, the UK combines flexibility and security within its own particular labour market model (see Box 1 below).

Box 1: The UK labour market model

- key employment rights extend to “workers” as well as employees;
- a relatively high employment rate helps to deliver employment security;
- “traditional” employment contracts are relatively flexible when compared to those in other Member States, whilst still adequately protecting employees against dismissal;
- the social security burden attached to such contracts is relatively low; and
- the unemployed are encouraged back to work through various government initiatives such as New Deal, which provides support for particular groups such as lone parents and the over 50s.
Flexibility (Consultation questions 1-5)

12. Contrary to popular perception in some quarters, the UK has a wide range of employment laws. To name but a few, there are legal restrictions on the circumstances in which employers can dismiss employees; procedures to be followed in making single and multiple redundancies; minimum redundancy payments and notice periods; and a National Minimum Wage. Nonetheless, the view of our members is that the UK still remains a relatively flexible place to do business when compared to many other Member States.

13. Retaining and enhancing this flexibility is critical for the success of EEF members. If employers are unable to make changes to the size and structure of their workforces, they may be reluctant to recruit. This has potentially serious consequences for employment levels and economic growth. However, the need for flexibility goes further than flexibility in relation to employment levels. Our members also need flexibility, for example, in relation to the organisation of working time or the contractual arrangements they can offer to prospective new workers.

14. Our members’ need for flexibility in this latter sense, i.e. in terms of hours worked and contractual arrangements, coincides with a demand from workers themselves for the same types of flexibility in terms of work/life balance. Unfortunately, this is not always apparent from listening to the views expressed by some trade unions. This may be because trade unions have traditionally represented employees on permanent “standard” employment contracts, or the so-called “insider” group, and have been relatively unsuccessful in recruiting other workers into membership. Moreover, whilst many EEF members recognise unions for some of their employees and generally have constructive relationships with them, union membership is generally on decline in the UK, with just 17.2% of employees in the private sector being union members.1 As a result, the views expressed by trade unions do not necessarily accurately reflect the views of the majority of the workforce.

15. A recent UK survey2 concluded that 50% of all working adults (52% of men and 48% of women) now want to work more flexible hours. Moreover, UK employers are responding to this demand, where possible, in order to recruit and retain their most talented workers. At the same time, many individuals choose to avoid so-called standard employment contracts precisely because they want to be able to decide for themselves whether and when they work.

16. EEF members do not demand significant or wholesale reform of current UK employment law in order to achieve flexibility, but they wish to see that level of flexibility preserved. They also see the need for greater simplicity and transparency in the law (see below under “reform of labour law”) and the way in which it is enforced.

Security (Consultation questions 4-6)

17. The UK already protects workers as well as employees by a floor of key employment rights (see below under “rights of workers”).

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1 DTI (2006) Trade Union Membership 2005
2 Holmes et al (2007), The future of Work: Individuals and Workplace Transformation
18. However, we do not believe that true employment security comes from just having employment rights or protection against dismissal. Instead, we believe that workers feel truly secure when they know that:

- a high proportion of those who want to work can find work (i.e. the rate of employment is high);
- they have the experience, skills and attributes to continue to succeed in their current job and/or to find new work; and
- they work for an organisation which is profitable and competitive enough to survive in today's challenging environment.

19. The Green Paper encourages a debate about what role labour law can play in promoting security. However, as outlined above, we do not see labour law as the primary or most effective means of delivering security. Labour law can confer job protection, but true employment security comes from being employable. Economic, education, and active labour market policies are much more effective in promoting employment security.

20. There is a role for employers, governments and indeed individuals themselves to ensure that workers have the requisite experience, skills and attributes to be employable. But this is, and should remain, an issue for national governments. The EU’s role should be limited to encouraging the sharing of good practice across Member States.

Rights of workers (Consultation questions 2, 8 and 12)

21. In the UK, a “worker” is (broadly speaking) somebody who is neither an employee or self-employed and running their own business.

22. Many EEF members use a wide variety of workers, including agency workers, casual workers, homeworkers and labour-only subcontractors. They are used for many different reasons, including coping with seasonal or unforeseen changes in the demand for products, staffing absence or because a particular type of working (such as homeworking) suits a certain work process.

23. Being able to use such workers in a flexible way is critical for employers. A large proportion of EEF members face significant peaks and troughs in demand and, when an order is received, time is of the essence. They need to be able to bring in extra numbers or specialised skills very quickly, but cannot afford to retain extra labour once demand drops off. The same applies when seeking cover when permanent employees are absent on, for example, maternity leave or holiday.

24. It is wrong to typecast all “workers” in the UK as being excluded or exploited. On the contrary, many of them:

- are highly skilled;
- are paid at higher rates than comparable employees; and/or
- have chosen to take this type of contract because it offers them more choice over when and where they work or a way of re-entering the labour market after periods of absence due to childcare, unemployment or long-term illness. This is true of lower-skilled workers as well as higher-skilled ones.
25. UK employers may not extend their full employee benefit package to workers sometimes because such workers lack “employee status” but also because the temporary or sporadic basis on which such workers tend to be engaged would make it impractical for employers to do so. For example, a company sick pay scheme might offer full salary on any day when an employee is too sick to work, but such schemes are unworkable if workers can choose their working days. Where such employee benefits are not extended to workers, this can be one (but not the only) reason why such workers may receive a higher rate of pay than comparable employees.

26. Not all UK employment rights extend to workers, as opposed to employees. Again, this is partly for reasons of practicality. For example, it is difficult to give paternity leave to a worker who has no ongoing obligation to do any work or rights to time off to a worker who can choose his working days. However, it is also the result of the targeted approach adopted by the UK, which is referred to in the Green Paper and illustrated further in Box 2 below.

**Box 2: The rights of workers in the UK**

The UK Government has adopted a “targeted approach” to the rights of workers. Thus, when issuing new employment legislation, it decides following consultation of interested parties if this should cover workers as well as employees. Over time, this approach has created the following floor of rights for all UK workers:

- The right to the National Minimum Wage;
- The right to paid holiday;
- The right to sufficient breaks and maximum working hours;
- The right not to be discriminated against on grounds of sex, marital status, race, nationality, disability, age, sexual orientation, religious belief or part-time status;
- Protection against unlawful deduction from wages;
- Protection against retaliatory action for having disclosed malpractice (“blowing the whistle”); and
- Data protection rights.

The UK Department of Trade and Industry (DTI) launched a consultation in 2002 on the issue of employment status and the current framework and coverage of employment rights. In its 2006 *Success at Work* policy statement, the DTI confirmed that further changes to the legal framework would not prevent instances of abuse or lack of awareness about employment rights. It could however damage labour market flexibility and result in a reduction of overall employment. The DTI therefore confirmed that the UK’s existing framework meets the labour market’s current needs and the government saw no need for further legislation in this area.

27. Equally, workers in the UK do not have the same legal employment obligations as employees. Often, workers can choose whether and when to work. They also do not owe obligations to give notice or duties of trust and confidence towards the employer.
28. The question of whether or not employment rights should be extended to all workers is a key theme running through the Green Paper. We would strongly resist any EU or national legislation which had the effect of extending employment rights to all workers in the UK for the following reasons:

- extending many employment rights to workers would be impractical for the reasons described above;
- it could significantly increase labour costs;
- it would undermine the flexible way in which our sector currently engages such workers and thereby defeat the purpose of recruiting them;
- workers in the UK are already adequately protected by UK employment law and the UK government has concluded, after extensive consultation, that there is no need for further legislation in this area (see Box 2); and
- it would not deliver employment security because, as outlined above, we believe that this ultimately comes from employability not just employment rights.

Rights of agency workers (Consultation questions 9 and 10)

29. EEF members use agency workers in the same way and for the same reasons as other "workers". All agency workers have the floor of rights described in Box 2 above. Many agency workers are taken on by the agency as employees and so gain additional rights. However, whether the individual is engaged by the agency as a worker or as an employee, the essence of an agency work arrangement is that the agency bears all of the costs, uncertainties and risks involved in being an employer, and receives a fee from the client company in return for this. The client company, on the other hand, benefits from being able to source specialist skills, bring on board extra workers quickly at peak times or "try out" workers it might later want to recruit on a more permanent basis.

30. In our view, it is critical that the EU does not undermine the main purpose of agency work by converting agency work contracts into standard employment contracts.

31. In the UK, however, there is a need to clarify who should be responsible for compliance with any employment rights of agency workers. At the moment, the agency clearly bears the responsibility for paying tax and social security and ensuring compliance with the National Minimum Wage and working time legislation. However, there have been some recent UK court decisions in which the client (not the agency) has been found to bear responsibility for compliance with employment rights. This has led to uncertainty with employers, agencies and agency workers not knowing where they stand. It is in the interests of all three parties that this situation is resolved. We understand that the UK government appreciates this and is considering how best to address this complex issue.

32. Whilst many employers might welcome EU legislation clarifying (and only clarifying) that the agency bears sole responsibility for any employment rights, we believe that such legislation would be better coming from the UK government. This is partly because the solution can then be better targeted at the specific problems within the UK. It is also partly because we are unconvinced that the EU can realistically hope to achieve workable legislation on agency workers, not least because different Member States have historically taken very different approaches to the position of agency workers and this is reflected in the issues
(or lack of them) which these Member States have in relation to such workers today.

33. Clarifying that the agency bears responsibility for any employment rights would ensure a floor of rights for all such workers. However, the UK government has recognised that there are pockets of agency work where individuals are particularly vulnerable and has sought to address them through its recent legislation on gangmasters and its proposed legislation on particular types of agency work (see Boxes 3 and 4). This is a good illustration of the targeted approach to addressing specific problems that the UK is now following and which we support.

Box 3: The Gangmasters (Licensing) Act 2004

This Act was the UK’s response to heightened public awareness about the vulnerability of workers (especially immigrant workers) supplied by gangmasters to perform work such as gathering shellfish at UK seashores.

A gangmaster is defined as anyone who uses workers to carry out defined types of agricultural work. A worker is anyone doing the work, whether or not as an employee or through an intermediary.

The Act establishes the Gangmasters Licensing Authority to operate a licensing scheme, set licensing conditions and maintain a register of licensed gangmasters. The Act also creates new offences, including that of using false documentation, with financial penalties for non-compliance.

Box 4: Vulnerable agency workers – UK government consultation

The UK government is currently seeking to build on existing regulations governing the conduct of employment agencies by targeting particular areas of abuse or poor practice.

For example, the government has identified cases where individuals hire a venue for a short period, invite would-be actors/models to attend and then engage in hard-sell tactics to persuade them or their parents to pay high fees for the provision of services and the promise of work. The government proposes specific legislation outlawing this and other similar but isolated practices.

34. In the Green Paper, the Commission has linked the questions about agency work with questions about sub-contracting to commercial partners. In the UK, we would not tend to regard these issues as being related. Indeed, we are not aware of any issues presented by commercial sub-contracting in the UK. If a sub-contractor engages employees to perform a contract, the sub-contractor is responsible for ensuring compliance with their employment rights. No doubt there are some unscrupulous sub-contractors (just as there will always be a small
minority of unscrupulous employers of every type). However, we are unaware of any kind of systemic problem with commercial sub-contracting in the UK. Indeed, we would have thought that the real problem (if there is one) occurs with subcontracting to commercial partners outside of the EU, where compliance with employment laws may be much harder to ensure. Any legislation on this issue is likely to encourage more sub-contracting outside of the EU, and thereby worsen any problems rather than solve them.

Harmonising the definition of worker (Consultation question 12)

35. We recognise that the definitions of “worker” and “employee” in the UK are, to an extent, complex and unclear. However, this is the inevitable result of needing to:

- reconcile the approach of the taxation authorities towards tax/social security status with that of the courts towards employment status; and
- fit a wide (and constantly changing) variety of contractual relationships into a small number of categories.

36. These factors are complex and cannot be overcome through further legislation whether from the EU or the UK. Standardised EU definitions would be particularly inappropriate, not least because Member States have different tax and social security regimes.

37. The Green Paper asks the question about defining who counts as a “worker” in the context of a discussion about frontier workers, i.e. workers who live in one Member State but commute to work in another. Leaving aside certain highly-paid professionals in the London financial sector, the UK’s experience of such workers is probably confined to Northern Ireland - where some workers commute across the Irish border. However, we understand from our Association in Northern Ireland that employers have no difficulty working out the employment status of such workers and are not aware of any problems created by the fact that Ireland may have a different definition of “worker” from Northern Ireland (see Box 5).

Box 5: Frontier Workers – the view from Northern Ireland

EEF Northern Ireland confirms that some companies based in Northern Ireland do engage workers who commute across the Irish border.

When we asked if there were problems created by Ireland having a different definition of “worker” from Northern Ireland, they did not believe that they had encountered any such problems. They consulted with some of the key organisations in the area, who were also unaware of any such problems. They often experienced difficulty in working out the tax and social security issues associated with such workers, but not in establishing their employment status.

38. When we raised this issue with our members in the context of the idea of harmonising the definition of worker, their consistent response has been that most problems arise because of the understandably different tax and social security rules between Member States (which of course cannot and should not be harmonised).
39. We appreciate that employers in some other Member States may well have
difficulty in establishing, or establishing a consistent approach to, the employment
status of frontier workers. We do not know how difficult these issues would be to
resolve, but we believe that they will be confined to relatively small geographical
areas within the EU. In our view, it is crucial that such issues (wherever and to
whatever extent they exist) must not dictate the approach that is adopted
throughout the whole of the EU.

Self-employment (Consultation questions 7 and 8)

40. The Green Paper asks questions about defining self-employment and extending
rights to all those engaged in “economically dependent work”.

41. We think that producing a better definition of “self-employment” is unachievable
for the same reasons that producing a better definition of “worker” and
“employee” is unachievable (see above).

42. We are also unconvinced that the concept of “economically dependent work” is a
useful or meaningful way of deciding which, if any, individuals should have
employment rights. The fact that a consultant is working exclusively for one
company on a self-employed basis does not necessarily make him economically
dependent upon that company. He may be able to move onto replacement work
very easily. In fact, he may be less economically dependent than the company
itself, which may have just one single client and be unable to survive if the client,
for example, decides to outsource the work beyond the EU.

43. It is also important that the EU continues to promote innovation and
entrepreneurship. As such, the EU should be encouraging individuals who are
setting up businesses to be economically independent, supported by the skills
and economic circumstances necessary for success, rather than rewarding and
appearing to put a higher value on economic dependence.

44. In any case, in the UK, many individuals whom the EU might regard as
“economically dependent” are in fact covered by a number of key employment
rights, either because they fall within the definition of “worker” or because UK
legislation goes beyond workers to include the self-employed (such as, for
example, our anti-discrimination legislation).

45. For these reasons, we would not support any legislation extending rights to self-
employed individuals deemed to be engaged in “economically dependent work”.

Enforcement (Consultation questions 13 and 14)

46. As regards the enforcement of both labour law generally and undeclared work
specifically, we do not see a useful or effective role for the EU. We see this as a
matter that is best left to individual Member States which, over the years, have
developed different approaches that suit their legal system and employee
relations history/culture.

47. In our view, the key to effective enforcement is to identify the problem areas and
then target them through whatever means are the most effective. This is likely to
involve swift and focused action on a case-by-case basis. EU legislation is not
going to be effective for this purpose and is therefore unlikely to be helpful.
**Working time (Consultation question 11)**

48. We consider that the review of the Working Time Directive must retain the ability for employers and workers to be able to agree working time arrangements that suit them and reflect workload peaks and troughs. In particular, EEF members are firmly of the view that:

- Working time should be automatically averaged over 52 weeks; and
- The individual opt-out from the average 48-hour working week should be retained.

49. EEF recognises that there are major differences of opinion between Member States as to how this review should be progressed. We consider that one way in which the current impasse could be addressed is to follow the suggestion of CEEMET, the European employers’ organisation to which EEF belongs, of:

- First, finding a practical resolution of the issues arising from the ECJ decisions in SIMAP/Jaeger; and then
- Second, addressing the specific request in Article 22 of the Directive requiring the Council to “re-examine the provisions of this paragraph” which would address the individual opt-out question.

**Improving and reforming labour law (Consultation questions 1 and 3)**

50. The Green Paper asks how labour law might be reformed to address the various challenges of the future.

51. As far as the reform of domestic labour law is concerned, we have already highlighted the need for reform in relation to agency workers in the UK. There is also a need for greater simplicity and transparency in our domestic law. At present, EEF members are struggling to keep pace with the continual influx of new legislation and case-law and find it hard to understand how the various rules interact with each other. As a result, businesses often do not know in advance if a business decision will be legally compliant or not. In response to a recent DTI consultation on simplification of employment legislation, we called for a reduction in the amount of legislation introduced annually, more reliable government guidance centred on business processes and the simplification of certain legislation.

52. As far as reform of EU labour law is concerned, if de-regulation is not on the agenda, there is nonetheless a need for better regulation.

53. First, we believe there is a need for greater clarity in EU legislation. This is particularly the case for SMEs, who should not need to take specialist legal advice before making seemingly-routine business decisions. For example, the legality of having a retirement age of 65 is now being challenged in the UK. This is a matter which could have been dealt with more clearly, rather than obliquely, from the outset in the 2000/78 EU Framework Directive. Member States must retain sufficient room for manoeuvre but EU legislation should not be an invitation to litigate.

54. Second, we believe that EU directives on labour law should only be issued after an impact assessment has been carried out. It is important that:
• impact assessments are structured, meaningful and comprehensive;
• there is a genuine attempt to assess the practical impact of the would-be Directive in each Member State;
• any issues exposed by the impact assessment are resolved as far as possible before the Directive is issued.

55. Third, in relation to ECJ judgments, we believe that steps should be taken to ensure that ECJ judges have a better insight into the practical impact of judgments they may be about to issue. It is extremely hard to reverse decisions which have already been taken, but some decisions might have been avoided altogether had their practical impact been fully understood. For example, the ECJ decision on rolled-up holiday pay in Robinson-Steele etc has caused serious uncertainty and dissatisfaction in the UK and is almost impossible to apply to the UK practice of using “casual-as-required” labour. Equally, the ECJ decisions in SIMAP/Jaeger have, according to the Commission, left the majority of Member States in breach of the Working Time Directive in relation to on-call work. All of these decisions involve the ECJ simply transposing principles which might be appropriate for “normal” employment contracts into very different “non-standard” types of contract. A better insight into how “non-standard” contracts are being used within Member States might have resulted in a different outcome.

Conclusion: The role of EU

56. The question of what role the EU – as opposed to the Member States - should play in any programme of modernisation is a key theme throughout the Green Paper.

57. We see a critical role for the EU in promoting examples of good practice and in continuing to push forward the debate. For example, a number of EEF members have expressed interest in learning more about the Danish model of flexicurity and in what elements of this model might be adaptable for the UK.

58. However we believe that the main responsibility for labour law must remain with Member States and the EU should refrain from any top-down legislative measures in this area.

EEF, London, 30 March 2007

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