Labour Law Green Paper  
DG EMPL/F/2  
J-37 05/26  
European Commission  
B-1049 Brussels  
BELGIUM  

30th March 2007

Dear Sir / Madam,

Modernising Labour Law

Thank you for giving the Institute of Directors an opportunity to respond to the Commission’s Green Paper on the future development of labour law.

The IoD is a non-party-political business organisation with some 53,000 members in the UK and across Europe. Our aim is to help directors to fulfil their leadership responsibilities in creating wealth for the benefit of business and society as a whole. 70 per cent of our members are involved in running small and medium-sized enterprises.

Introduction: a more flexible labour market

The IoD’s overall view is that the Green Paper should be seen as an opportunity to ensure that EU employment law is fit to cope with the demands of globalisation. This means that it must be flexible and must permit the free flow of labour that is a crucial aspect of the Internal Market.

There is a concern that the current _acquis_ of employment law was largely drawn up in response to a quite different set of pressures – principally the perceived need to protect vulnerable employees from exploitative employers. In today’s more competitive markets – not just for products and services, but for the best employees – it is market dynamics, rather than legislative rights, that are more likely to provide good levels of protection for workers across the EU.

The increasingly diverse nature of employment relationships across the EU economy is something that should be celebrated, not regulated. It would be a mistake to think that there should be an EU legislative model for every different kind of employment arrangement. Rather, EU law should seek to provide a sound base on which employment relationships can be built by setting out basic rights and obligations, rather than a whole series of detailed prescriptions.

It is essential to remember the central purpose of the Green Paper – to support the Lisbon Strategy for Jobs and Growth. The worst possible outcome for the Green Paper process would be to use it as the starting point for further regulations or costly burdens on employers. This would run completely counter to the Commission’s very welcome emphasis on Better Regulation.
Q1. What would you consider to be the priorities for a meaningful labour law reform agenda?

A. The primary consideration for those developing EU employment policies should be to ensure that they support the Growth and Jobs Strategy. Strengthening EU competitiveness and helping businesses respond to the challenges of globalisation must remain the EU’s top priorities and the nature of employment policy will be a crucial factor in determining whether the Lisbon objectives are met.

The IoD would highlight three particular priorities:

i) increasing (not reducing) the flexibility of the labour market by seeking to reduce the burden of regulation.

ii) strengthening the free movement of labour within the Internal Market (this, after all, is one of the ‘four freedoms’ enshrined in the EU’s treaties) in order to ensure that the economy can benefit even more than at present from the market’s capacity to supply labour where it is needed.

iii) although it is more of a matter for Member States than for the EU institutions, policymakers should look to strengthen support for lifelong learning and re-skilling. We must recognise that the days of the single lifelong career are numbered.

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?

A. Yes. For example, the strict requirements on maximum working and rest times set out in the Working Time Directive seem increasingly anachronistic in today’s very diverse labour market. The Directive was clearly designed for a labour market in which the vast majority of people work 9-to-5, five days per week for a single employer. Today’s market is far more diverse and it seems absurd that these matters should be decided at EU level rather than simply negotiated and agreed between employer and employee.

Although the IoD is not formally proposing that negotiations on a new version of this highly controversial Directive should be reopened, it does serve to illustrate the point – that EU law has simply not kept pace with economic development.

It should be said that labour market deregulation alone is only part of the answer. We also need a labour force with the right mix of skills. This is why educational systems and lifelong learning are so crucial – more details below.

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?
A. See the above answer.

It should also be said that the experience of countries that have made a conscious effort to liberalise their labour markets shows how the reduction of outmoded regulation can play a vital role in increasing employment and boosting prosperity.

Q4. 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?

A. We do not have to choose between greater flexibility and high standards of security and social protection; they are not mutually exclusive.

The IoD would argue that, by promoting strong economic performance, flexible labour markets actually help to create high-quality, well-remunerated jobs.

Q5. 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?

A. There is certainly a strong argument for more flexible employment protection legislation. Across the EU, higher unemployment rates are associated with more extensive labour market regulation, and dismantling some of these controls is essential if Europe is to create more jobs.

A welfare safety net for the unemployed should certainly be maintained, but the emphasis of future policies should be on practical initiatives to aid re-entry to the labour market, rather than on simple income compensation. It is clearly better to equip the unemployed with new skills than to simply pay them to remain out of work.

The IoD would welcome a strong public policy emphasis on supporting lifelong learning and re-skilling, although it is important to recognise that these are matters primarily for national governments, rather than for EU policy-makers.

Policy-makers will need to consider how this can be achieved in a manner that works with the grain of business activity, rather than by imposing new burdens on employers. For example, a statutory right to training would not be the right way forward. In the past, statutory schemes have led to poor quality training and a box-ticking approach.

The better approach would be to encourage employers to provide good quality training. A good example would be that of the UK organisation Train to Gain, which helps employers to diagnose their training needs and then advises them on where they can best find the appropriate training providers.
Q6. What role might law and/or collective agreements negotiated between the social partners play in promoting access to training and transitions between contractual forms for upward mobility over the course of a fully active working life?

A. The IoD would caution against using the law to coerce employers into providing training. 96% of IoD members already provide training; a legal requirement would either make no difference or would add regulatory complications to a process that already works perfectly well. Collective agreements negotiated between the social partners are not the best way forwards. The best training will always be that which is delivered voluntarily because it makes good business sense. Coercing the employer – either by law or by collective agreement – will not produce high-quality results.

Q7. 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?

A. No. The increasing variety of forms of employment and self-employment (and all stages in between) is a sign of the increasing strength and success of the labour market. It would be a mistake to think that the EU could design a legal definition for every different model of employment relationship.

Instead, policy-makers should concentrate on allowing this growing diversity of employment arrangements to flourish – without intervening with extra regulations.

Q8. 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?

A. An extensive ‘floor of rights’ already exists – provided through existing EU employment directives. Measures such as the Equal Treatment Directive, the Working Time Directive, the Parental Leave Directive and the Information and Consultation Directive provide a complex web of rights that covers many (although not all) workers.

Of course, much of this legislation refers only to employees, but there are two good reasons for resisting any extension to all forms of employment:

- First, this would represent a significant extension of the regulatory burden on business, and would run counter to the EU’s ‘Better Regulation’ programme.
- Second, one of the attractions of non-employed status (for many individuals, anyway) is that it frees them from what are sometimes seen as the restrictive rules and obligations associated with employed status. It would be a shame to lose what is seen by many as an advantage.

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1 Who do we think we are?: a survey of the IoD membership, IoD Policy Unit, March 2006, p.40
Q9. Do you think the responsibilities of the various parties within multiple employment relationships should be clarified to determine who is accountable for compliance with employment rights? Would subsidiary liability be an effective and feasible way to establish that responsibility in the case of sub-contractors? If not, do you see other ways to ensure adequate protection of workers in “three-way relationships”?

Q10. Is there a need to clarify the employment status of temporary agency workers?

A. The Employment Council has tried and failed to reach agreement on the proposed Directive on Temporary Agency Workers, so it would seem inappropriate to attempt to revive the same proposal under a different heading.

Having said this, it is obviously important that agency workers should have a clear understanding of which body – the agency or the user undertaking – has responsibility and liability for each aspect of the employment relationship. It is less clear that new EU legislation is required for this purpose. In the vast majority of cases, the existing mix of Member State-level legislation and self-regulation does work in practice.

Q11. How could minimum requirements concerning the organisation of working time be modified in order to provide greater flexibility for both employers and employees, while ensuring a high standard of protection of workers’ health and safety? What aspects of the organisation of working time should be tackled as a matter of priority by the Community?

A. The increasing diversity and flexibility of employment arrangements inevitably raises doubts about whether the current structure of working time legislation is still appropriate for the 21st Century. The legislation is based on a very traditional view of work – that people are employed full time (at least five days per week) in jobs with reasonably regular hours (typically 9.00 to 5.00).

As the Green Paper rightly notes, this traditional model is diminishing in popularity, and it is not difficult to envisage a stage at which this traditional model, rather than newer and more flexible arrangements, will itself be seen as ‘atypical’.

With this thought in mind, it seems sensible to question whether we still need legislative rules about working hours. Surely better protection could be provided by strengthening the competition for talent between employers? As in so many markets, it is competition, not regulation that is the best guarantee of high standards.

Concerning the Working Time Directive itself, the priority should be to resolve the difficulties caused – particularly for health services – by the SIMAP / Jaeger cases.

Q12. 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?
A. The IoD would not support a single European definition of ‘worker’. Not only would it be difficult to find a single legal formulation that covers all kinds of employment status, it would also be an example of an outdated way of thinking. We should be celebrating the diversity of the modern labour market, not looking for ways to make it more uniform.

In any case, the Posting of Workers Directive does not disbar workers from benefiting from more generous rights set out in their contract, compared with the basic employment law rights that apply in the country to which they are posted. So there is no reason to think that posted workers would somehow lose out on the contractual rights that they would enjoy when working at home.

Q13. 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 co-operation?

A. The tone of this question seems out of kilter with the Commission’s pro-enterprise, Better Regulation-based approach. It implies that a tougher approach is needed on enforcement – the reverse of the lighter-touch approach that the Commission is attempting to introduce in other areas.

The IoD would certainly be in favour of more practical co-operation between Member States, but this should be with a view to facilitating the free movement of labour and creation of jobs, not with a view to strengthening enforcement.

It should be noted that undeclared work and ‘black economy’ activity are often attempts to avoid what may be seen as an excessively burdensome regulatory or tax regime. The best way of bringing these activities back onto a legal basis is usually to ease the burden of regulation, rather than to increase the intensity of the enforcement regime.

We would also warn against creating a new role for the ‘social partners’. SMEs are often excluded from the social partner network, which is more suited to serving the interests of larger companies. In any case, the ‘social partner’ concept, based as it is of the view that there are two sides to the economy (employers on one side and trade unions on the other) seems increasingly outdated in today’s flexible economy.

Q14. Do you consider that further initiatives are needed at an EU level to support action by the Member States to combat undeclared work?

A. No – for the reasons given in the answer to Question 13 above.

Please do not hesitate to contact me for any further information.

Yours sincerely,

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