EU Green Paper on Labour Law
Response from the National Group on Homeworking

The National Group on Homeworking is a UK NGO working exclusively on homeworking issues. We offer support and employment rights advice and representation to homeworkers, and campaign for improved employment terms and conditions. It is because of our regular contact with homeworkers that we have the authority to claim to be the national voice on homeworking. The National Group on Homeworking is also a member of the Federation of HomeWorkers Worldwide, an international network of homeworker organisations campaigning for improved conditions for homeworkers.

The National Group on Homeworking estimates that there are over one million people in the UK undertaking paid work at home under the control of a company. Homeworkers are used to work on a vast range of products and services, from packing pet-care items to greeting cards, from the assembly of umbrellas to travel sales, from charity fundraising to data-inputting. The vast majority of homeworkers are women, and the most common reason they give for working from home is caring responsibilities. Based on over 20 years work it is clear that a disproportionate number of homeworkers are from ethnic minorities – and these workers are often amongst the most disadvantaged in terms of pay and working conditions. Work is often irregular, and pay is frequently well below the minimum wage. Other problems faced by homeworkers include long hours and tight schedules, lack of health and safety checks and invisibility – meaning homeworkers do not get the recognition they deserve for their economic contribution.

The National Group on Homeworking exists to improve employment conditions for all homeworkers. We support individual homeworkers through our telephone advice line and case-work service, work with employers to encourage best practice and campaign for government policies to take the needs of
homeworkers more fully into account. We believe homeworking should be a positive option, for both individuals and employers.

One of the primary obstacles to UK homeworkers accessing rights and protections is their uncertain employment status. Many are categorised as ‘workers’ or ‘self-employed’ by the companies they work for, and struggle to assert their rights as employees at Employment Tribunals.

A lack of clarity over employment rights and protections can be particularly difficult for homeworkers to tackle as, working from home, they have little access to the support of other workers or to other sources of information, advice and support regarding their situation. Homeworkers are rarely organised or members of the formal trade unions.

Homeworkers are therefore precisely the kind of workers likely to be caught in the ‘outsider’ trap referred to in the Green Paper’s Introduction. Their employment is precarious, due both to the irregular nature of their work and their uncertain status.

We have not answered all the questions in the Green Paper, but have instead limited ourselves to those which have most relevance to homeworking, touch upon issues we have direct experience of as an organisation, or which refer to important principles regarding rights for workers.

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

The priority must be greater protection for all vulnerable workers who are currently excluded from rights either because they lack employment status or because they have unclear employment status.
We need a clear and consistent definition of worker, and all those defined as ‘workers’ should have access to the full range of employment rights (recognizing some rights are dependent on a qualifying period).

2. 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) We are concerned that the debate about improving flexibility and employment security – or flexicurity – is tending towards a trade-off between employment rights and social protections (see also Question 5). There is clearly a need to improve social security, but this must not be ‘bought’ at the expense of workers’ rights.

Furthermore homeworkers frequently lose out on both aspects of the ‘flexicurity’ equation – with fewer rights and more limited access to social security than traditionally employed workers. Access to some out-of-work benefits rely on a ‘worker’ having contributed through tax and National Insurance. Those who do not have employee status (for tax and NI purposes) would not be able to automatically receive Job Seekers Allowance for example, as they and their employers are not paying into the standard tax and NI schemes.

b) True flexibility is beneficial to both workers and employers. New alternatives to traditional on-site nine-to-five jobs are being explored and promoted as part of flexible working, but they must not become working practices that reduce workers rights, rates of pay or quality of employment. Homeworking, for example, with sufficient employee rights and protections can be the ideal form of flexible working for both parties. Without these rights, however it is frequently exploitative and insecure.
Under the current situation, flexibility is very much on the side of the employers – evidenced by the irregular work and income experienced by many homeworkers. When an employer's orders reduce leading to a decline in work, homeworkers receive little or no work and thus little or no income. This is often exacerbated as they receive little or no notice when no work is available. Whilst some degree of flexibility in work-loads is one of the key reasons employers like to use homeworkers, when taken to extremes such irregularity can be extremely difficult for tight family budgets to cope with.

c) There is a clear need to tackle labour market segmentation, but it is important that this is done through leveling up – ensuring all workers regardless of their contract have access to full employment rights. The genuine problem of segmentation must not be used as an excuse to downgrade the rights of those already recognized as employees.

d) The Green Paper refers to the differing experiences of men and women in the labour market. A disproportionate number of homeworkers are women, many with caring responsibilities. A lack of rights for homeworkers and other vulnerable women workers who do not have employment protection means they face disadvantage in the workplace in times of illness, unemployment and motherhood. They do not have equal automatic access to protections in this situation as they are caught in the 'outsider' trap due to lack of status and rights.

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?
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?

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 term ‘more flexible employment protection’ should not be used as a euphemism for fewer employment rights. Similarly it is frequently assumed that ‘job creation’ necessitates reducing workers rights. Such attitudes indicate a ‘race-to-the-bottom’ approach which must be rejected as both unrealistic and undesirable for the EU.

According to the Introduction of the Green Paper, its focus is to ‘support the Lisbon Strategy’s objective of achieving sustainable growth with more and better jobs’. It is therefore recognised that job creation, if it is to tackle poverty and increase prosperity, has to be about the quality of jobs, as well as the quantity. Reducing employment rights would result in ‘worse’, not ‘better’ jobs.

Truly flexible working arrangements should benefit both workers and employers. Homeworkers are amongst the most flexible of workforces, enabling companies to deal with fluctuating demand for labour. It does not, however, follow that these workers should have fewer rights than others on more conventional contracts. Indeed, we believe true flexibility can only be achieved through ensuring employment protections are available to all, on an equal basis. Flexible working requires flexible rights – in other words clear protections that can be applied to all, regardless of their working arrangements.
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?

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?

a) Greater clarity is certainly needed in the UK’s definition of employment and self-employment. The current system of uncertain definitions and accumulated case law leads to great uncertainty for both workers and businesses.

The problem of unclear status affects not only homeworkers, but other atypical workers such as agency workers, freelance workers, ‘casual’ workers ‘zero-hour’ contract workers and office holders. The National Group on Homeworking, along with other representatives of such workers were extremely disappointed when, following a lengthy consultation on employment status, the UK government concluded in 2006 that no change in the law was necessary.¹

b) The Green Paper cites the ‘targeted approach’ adopted in the UK, creating the additional category of ‘worker’ with minimum rights which applies to those who may not qualify as ‘employees’. However, the situation in the UK is complex, and the following points must be considered

- The category of ‘worker’ was introduced to ensure even those who would not necessarily be deemed ‘employees’ would, nevertheless receive the protection of the Working Time Regulations and the minimum wage. This

¹ Department of Trade and Industry, Success at Work – Protecting vulnerable workers, supporting good employers, 2006
made these basic rights accessible to workers in a broad range of employment relationships, and in many ways was a very positive aspect of the Working Time and National Minimum Wage (NMW) legislation introduced in 1998.

- However, the uncertain distinction between ‘worker’ and ‘self employed’ under UK law means many economically dependent workers can nevertheless still be legally denied these basic rights. Many homeworkers are falsely categorized as self-employed by the companies they work for, even though they have neither the flexibility nor independence necessary to truly constitute self-employment. In other words the homeworker is not running her own business, but it nevertheless suits the employer to treat her as self-employed. This enables the employer to avoid the legal obligations (such as under the National Minimum Wage Act) they would have towards ‘workers’. The dependence on case law to distinguish between ‘workers’ and the genuinely self employed leads to increasingly complex and unpredictable decisions on status. A homeworker wishing to assert her rights can rarely be confident of being found to be an ‘employee’ or even a ‘worker’ at Employment Tribunal.

- Although the category of ‘worker’ was introduced with the laudable aim of enabling more vulnerable workers to access rights, it has also had the unfortunate consequence of creating a category of minimum rights into which unscrupulous employers can push their staff. In other words, there are homeworkers who would almost certainly have been found to be ‘employees’ with the associated employment rights when the distinction was only made between ‘employee’ and ‘self-employed’ – but, following the introduction of the ‘worker’ category in 1998, they are now more likely to be placed in this middle ‘worker’ category with minimum rights. We are now in the situation where a homeworker may be doing exactly the same job as an employee in a factory, but as the homeworker is unlikely to be
deemed an ‘employee’ they will receive fewer rights and protections. As has been outlined, homeworking has the potential to be an extremely positive form of flexible working, and this kind of flexibility should be encouraged, not punished through the denial of key rights. This concern is also relevant to Question 8 on the ‘floor of rights.’

- The UK situation is generally summarized as incorporating three categories of worker, the ‘self-employed’, the ‘worker’ and the ‘employee.’ In fact the situation, as regards homeworkers is actually more complex than that. Homeworkers are referred to in NMW law as a specific category of their own. To qualify for minimum wage homeworkers do not have to fulfill the ‘personal service’ test which can be key to determining ‘worker’ status. (This is because it is recognized that homeworkers working on rushed orders sometimes rely on help from other family members to complete their work and it was felt that this should not disadvantage them in accessing the NMW). This category of ‘homeworker’ in NMW law makes it easier for homeworkers to access the minimum wage, even if they are not found to be ‘workers’ in the legal sense, and we view it positively. However, this same legal category of ‘homeworker’ is not found in the UK’s Working Time legislation, meaning there are some homeworkers who may be eligible for the NMW but not for Working Time and holiday rights. The Green Paper is focused on tackling labour market segmentation – and the UK experience suggests that, whilst introducing new categories can help vulnerable workers access rights they would not have received before, it can nonetheless also contribute to labour market segmentation, by creating a growing range of increasingly complex new definitions. We would endorse the far simpler approach of extending employment rights to all workers who are not genuinely in business on their own account.
We appreciate this problem of status and access to rights may be a particularly acute one in the UK, but it is also clearly of growing concern across Europe. It needs to be tackled, as outlined above, by an extension of employment rights to all workers, and a definition of worker than includes all but those genuinely running their own business.

c) The concept of an ‘economically dependent’ worker may be useful here, but we are concerned that this definition is restricted to those who are ‘economically dependent on a single principal or client/ employer for their source of income.’ Any definition should not exclude those workers who have more than one job or source of income. Having two jobs is not necessarily an indicator of self-employment, but rather can be a sign of low pay, or (frequently for homeworkers) irregular work – and therefore vulnerability.

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?

a) A ‘floor of rights’ dealing with all workers regardless of the form of their work contract would be beneficial only it encompassed the full range of employment rights. A ‘floor of rights’ that offered only limited, basic protections would not address the current complexity and lack of clarity surrounding the rights of atypical workers. Nor would it address the problem of ‘segmentation’ in the labour market. Whilst it may improve some conditions for those at the bottom (it if were proactively enforced), it would also incentivise more employers to push their workers into this category of minimum rights. What is needed is the extension of employment rights to all dependent workers, regardless of their contract.
b) The successful introduction of the National Minimum Wage by the British Government in 1998, and subsequent increases to the rate, demonstrates that decent protections for workers need not be at the expense of job creation.

c) Furthermore a level playing field of clear employment rights would protect good employers from the unfair competition of more unscrupulous businesses – who profit not through innovation or efficiency but rather from legally exploiting their workers to keep costs down.

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 sub-contractors? If not, do you see other ways to ensure adequate protection of workers in "three-way relationships"?

Homeworkers are frequently at the bottom of long subcontracting chains. Some retailers have now accepted in principle a degree of responsibility towards workers in their supply chains, by signing up to various voluntary codes of conduct. However there is little evidence to suggest these codes are improving workers’ situations on the ground, and in particular atypical, informal and subcontracted workers are experiencing little benefit. This principle of responsibility therefore needs to be established and enforced in law. We support the need for a legal provision for joint and several liability for workers – which would help address the often complex situation homeworkers find themselves in regarding who is actually responsible for their rights and entitlements.

10. Is there a need to clarify the employment status of temporary agency workers?
The status of agency workers must be clarified. The draft EU Directive on Temporary Agency Work, if implemented, would set minimum standards for the treatment of agency workers across the EU, enhance the quality of agency work and improve the skills base of the whole workforce. An agency worker should not find themselves working under poorer terms and conditions than a directly-employed colleague doing exactly the same job.

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?

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?

All workers should be covered by the domestic employment legislation of the country in which they are working. Work towards a broader more convergent definition of ‘worker’ would help deliver clarity, equity and justice throughout the EU, but any such definition should act as a minimum, enabling member states to adopt more extensive definitions if they so wish.

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?
a) The issue of enforcement is a crucial one for any labour law, be it national or EU-wide, to have real impact. There is a serious lack of enforcement in the UK, with only health and safety and the minimum wage being covered by proactive government enforcement agencies. All other employment rights can only be enforced by individual workers through Employment Tribunals. Many workers in the UK may not even have this rights, as they would need to be an ‘employee’ in many cases to even have to right to go to tribunal. Those countries with inadequate enforcement procedures, such as the UK, should be encouraged to learn from other EU members who have more effective systems in place.

b) Whilst it would make sense to involve social partners in any co-operation around enforcement, it would be limiting to work solely with recognized ‘social partners’. A great many of the most vulnerable workers, such as homeworkers and informal workers, are not organized or represented by the traditional trade unions that are recognised ‘social partners’. Without undermining the crucial role of trade unions in EU activity, other forms of workers organizations, such as those that represent informal workers, also need to be involved.

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

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