Allianz Corporate Ireland p.l.c.

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

27th March 2007

Re: Green Paper on Modernising Labour Law to meet the challenges of the 21st Century

Dear Sir/Madam,

Please find enclosed our response to the questionnaire on the Green Paper on Modernising Labour Law to meet the challenges of the 21st Century.

I trust you find the above in order.

Yours sincerely,

[Signature]

Eugene Hardiman
Human Resources
Allianz Ireland
Modernising Labour Law Questionnaire

Question 1.

See IBEC (Irish Business Employers Confederation) response

'IBEC queries whether additional reform at EU level in the areas referred to in the Green Paper is necessary at all. National employment legislation amendments may be required but further EU reform will lead to unnecessary over-regulation'

Question 2.

Yes.

See IBEC response

'Adaptation of labour law for improved flexibility and employment security could lead to over regulation and consequently lead to a lesser degree of flexibility for both employer and employee. Increased regulations of the employment relationship through additional legislation will not per se bring about greater employment security. Security is fostered to a large degree by other general economic factors, for example, which engender confidence in the employment market'

Question 3.

Companies must adapt to changes quickly, but the often-rigid labour law rules often prescribe an inflexible regime. This makes it more difficult for companies to maintain the flexibility that is needed in global competition. The quick adaptation of companies - a prerequisite to remain successful - to the steadily increasing pace of changing economic framework conditions is hampered substantially.

Other bureaucratic rules often hinder the implementation of future-oriented plans in to practise. Judicial procedures linked to labour law have become more complicated during recent years and today current rules can hardly be harmonised with entrepreneurial concepts without the help of experts.

See IBEC response

'Additional empirical research and study is required in order to determine the effects of additional employment regulation on job creation potential and productivity in the Small to medium Enterprise (SME) Sector. However, it would appear that there is a strong perception amongst employers in this sector that 'less is more'. It is assumed that all additional regulation will result in increased cost and hence retard the employer's willingness and capacity to create additional employment. Its important that all labour-regulation is subject to a regulatory impact assessment with particular reference to the impact on competitiveness, employment, unemployment and labour market flexibility'
Question 4.

The laws should be simplified, especially those relating to extending the possibility to set time limits in employment relations without factual reasons could lead to the creation of additional jobs, this would also be the benefit of the fixed-term employed as fixed-term contract often leads to an unlimited employment contract. Fixed term or time-limited employment relationships are therefore an important step on the way to unlimited employment.

Given the reasons mentioned above, avoiding an aggravation of the right to set time limits in employment contracts is imperative. Excessive worker protection measures only lead companies to hesitate to recruit new staff, this has a very detrimental effect on unlimited employment relationships.

See IBEC response

'Increased flexibility with regard to the renewal of fixed term contracts would be a welcome means of facilitation additional recruitment of temporary workers. As the protections afforded to fixed –term employees are quite robust -particularly in the Irish context - such employees are at no comparative disadvantage with regard to terms and conditions of employment compared to their permanent counterparts'

Question 5.

See IBEC response

'The question of the desirability of combining income compensation for the unemployed with more flexible employment protection legislation raises a number of social policy issues. Of primary concern must be the need to maintain an incentive to work as the only real effective antidote to social exclusion and unemployment as has been demonstrated in the case of Ireland'

Question 6.

For the insurance industry, supporting access to training is not necessary. Also in the area of in-service training, Alliax fulfils its responsibility to train employees in the job above average. This is to the benefit of both the employer and employee. A general legal right to further education or in-service training would not make sense as it ignores the individual needs and burdens companies with new costs. Reality shows, that it becomes ever more difficult to find suitable trainees for the available apprenticeships, Facilitation the change between the different forms of employment, especially between limited an unlimited, temporary employment and self-employment could be helpful to bring more people into permanent employment.

See IBEC response

'The Law has a limited role to play in promoting access to training and facilitating upward mobility in the labour market. Comprehensive Equality legislation currently in place, works well to ensure adherence to non-discrimination principles in these areas'
Question 7.

See IBEC response

'IBEC is of the view that addition of further legal definitions to the issues surrounding the question of employment status (employee v independent contractor/self-employed) at EU level would not be helpful given the myriad of different individual situations that arise in practice. In the Irish context, the existing Code of Practice on Employment Status, combined with the corpus of decided case law in this area, provides very useful guidance to all concerned with this issue. It is noted that 'Towards 2016' contains a proposal to review the application of the existing Code of Practice on employment status with a view to more effective implementation.

IBEC believes that any attempt to 'impose' standard EU-wide definitions in this area would have considerable negative and disruptive effects on a well-developed national system which maintains a good working balance between social welfare, taxation and general employment law considerations'

Question 8.

See IBEC response

'IBEC has a shared commitment with the other Social Partners to securing better compliance with legal requirements underpinned by adequate enforcement. (This is provided for in current employment legislation and has been further underpinned by agreed measures under 'Towards 2016'.) However, there is no justification for seeking to extend a 'floor of employment rights' to genuine independent contractors. To do so would effectively collapse the distinction between the employees and independent contractors giving the latter group all of the advantages of employment status while they continue to enjoy the benefits of self-employment/independent contractor status'

Question 9.

See IBEC response

'In IBEC's view the responsibilities of the various parties in three way employment relationships (i.e. involving agency workers) are adequately provided for in existing employment legislation. At national level, new draft legislation proposed to update the legal regulation of employment agencies, will copper-fasten the current provisions governing the respective responsibilities of employment agencies and user undertakings to agency workers placed by the former at the disposal of the latter'
Question 10.

See IBEC response

"In IBEC’s view the responsibilities of the various parties in three way employment relationships (i.e. involving agency workers) are adequately provided for in existing employment legislation. At national level, new draft legislation proposed to update the legal regulation of employment agencies, will copper-fasten the current provisions governing the respective responsibilities of employment agencies and user undertakings to agency workers placed by the former at the disposal of the latter."

Question 11.

See IBEC response

"As the Department is aware, IBEC regrets the collapse at Council level of discussions regarding proposals to amend the Working Time Directive. There are issues which remain to be resolved at that level: the definitions of ‘at work’ and ‘rest’, particularly in the context of time spent ‘on-call’. Greater flexibility with regard to the issue of ‘reference periods’ for the purposes of the Working Time Directive would also be necessary."

Question 12.

Member States should retain their discretion regarding the definition of ‘worker’. While it is accepted that ‘frontier workers’ pose particular challenges, it is not inevitable that such challenges necessitate an EU wide change in the regulatory regime.

Question 13.

It is unclear what kind of potential co-operation between authorities at EU level is envisaged in the context of improving the effectiveness with which Community labour law is enforced. The question of the role of Social Partners at national level in this regard is relevant but not applicable at EU level.

Question 14.

‘Undeclared work’ is not a significant issue in Ireland in contrast to the reported experience in other Member States. It is also worth noting that again under the terms of Towards 2016 that the newly established National Employment Rights Authority (NERA) is to join the ‘Hidden Economy Working Group’ which consists of the Revenue Commissioners, Department of Social and Family Affairs, ICTU, IBEC, SFA and the CIF’
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