Response of the French authorities
to the European Commission’s Green Paper titled
“Modernising labour law to meet the challenges of the 21st century”

June 2007
Introduction

1. The Commission’s purpose, in publishing its Green Paper on 22 November 2006, was to launch a public debate on the adaptability of workers and enterprises to new forms of employment and new labour market constraints.

The Green Paper presents the modernisation of labour law as a key condition for the successful adaptability of workers and enterprises to the challenges stemming from the combined impact of globalisation and of the ageing of European societies. This is in line with the Lisbon strategy for achieving “a competitive economy, capable of sustainable growth with more and better jobs and greater social cohesion”. The Green Paper is thus in keeping with that strategy and should help fuel a new dynamic in accordance with its objectives.

The speed of economic change in recent years has subjected labour law to considerable stress. Constant restructuring, changing technologies, the opening up of economies and globalisation have all had a major impact on the organisation and operation of the labour market and the employment relationship itself. While permanent full-time work still remains the norm, we are nonetheless witnessing increasingly diverse forms of employment, increasingly discontinuous careers, increasingly precarious relationships and increasing risks of exclusion and detachment from the labour market.

If the new forms of employment cited by the Green Paper are not to be synonymous with casualisation, discrimination and segmentation, the legal framework must provide for a fluid labour market, facilitate and securitise transitions, and ensure equality of access to rights, benefits and training, whatever the form of employment. This naturally entails reforms, on the one hand to ensure the fluidity of the employment relationship by increasing convergence between the different types of employment contract, and on the other to facilitate and securitise transitions between different employment situations.

These are the issues and concerns identified by the European Commission and proposed to the Member States and the social partners for debate.

This debate is a crucial one, because it deals with matters that lie at the heart of our social pact, both in France and on the level of the European Union; it is of prime importance for the economic and social condition of the country.

2. Consultations with the national social partners organised by public authorities have, on the whole, elicited positions expressing a common understanding of the Lisbon strategy and the issues it addresses.

The unions, however, have been critical of the Green Paper’s emphasis on flexibility, which favours the employer, to the detriment of the various forms of security provided for the worker. They find inappropriate its suggestion that labour law has been unable to adapt and would be an obstacle to the operation of the labour market. They fear that the twin objectives of “more and better jobs” will be dissociated and opposed.

The first point that emerges from the discussions held on the national level is that labour law must evolve in accordance with a shared understanding of the issues, worked out in the framework of a process of negotiation and consultation. The law of 31 January 2007 on the modernisation of the social dialogue (n° 2007-130, OJ n° 27 of 1 February 2007, p. 1944) enhances the position of social dialogue and collective bargaining and places the social partners at the heart of the elaboration of norms and reforms. In late May 2007 the government invited the social partners to engage in interprofessional talks on social democracy, the evolution of types of employment contracts, the reform of...
unemployment insurance, security of employment and the life-cycle approach to work, with a view to
achieving significant progress by the end of the year.

The second point concerns the place of labour law and its role in the changes: it has to be at the centre
of and accompany any reform so as to ensure equilibrium and legal certainty. It may be a primary
instrument of evolution, but it is not the only factor influencing employment and labour relations,
which means that it is important to retain a global approach that takes account of other economic and
social dimensions, and particularly social protection.

3. In the light of the debates and consultations that have already taken place, the response of the
French authorities to the Green Paper proceeds from a two-pronged approach seeking to establish

- a balance between flexibility through a common process of securitising employment on the
  one hand, and
- a European social order ensuring workers’ individual and collective rights as well as their
  right to health and safety on the other.

While labour law must remain essentially a matter for the Member States, it is nonetheless impossible
to achieve a more fully integrated common market without shared objectives and common principles
concerning the organisation of labour and the pursuit of harmonisation through progress.

4. Moreover, the several elements of any proposed adaptation to employment legislation should
properly be considered in the context of the global market; in the same way, debate on the social
impacts of trade should not be reduced to questions of commercial competitiveness alone. In the
debate on the modernisation of labour law, the actions contemplated must be complementary and
coherent, on the domestic and on the Community level, with the defence of European values on the
international scene.

That is why, in line with the orientations proposed by the German presidency, several Member States,
including France, in a joint declaration on 14 February, called for a revival of the “Social Europe” and
the need to address more closely, and together, the new issues facing all the Member States – new
forms of mobility, globalisation, ageing populations – while at the same time reaffirming their
attachment to the values and principles of the European social model.
ANSWERS TO THE QUESTIONS

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

In the modernisation of our labour market and our labour law, the primary aim must be to ensure a new equilibrium that can accommodate business growth, the mobility of employment that is an inherent part of economic change, and security for the workforce. This equilibrium must be structured around four main guidelines:

- facilitating job creation in the private sector via greater fluidity in the labour market;
- promoting stable access and in case of discontinuity a rapid return to employment;
- combating the segmentation of the labour market by restoring an overall coherence to the different forms of contract and by reducing casualisation;
- supporting mobility whilst ensuring continuity of rights for the worker.

These changes are indispensable if our country is to boost its rate of job creation and achieve full employment within the next five years.

1.1 It is thus important to seek a new equilibrium between flexibility and security (“flexicurity”), in the flexibility necessary in the employment relationship, in redundancy management between employment expectations, severance compensation and personnel retraining.

Enterprises, which create both jobs and wealth, must be able to grow, to restructure rapidly and to respond to the fluctuations of the market if they are to withstand international competition.

Flexibility has to be adapted to the needs of enterprises, which are not uniform. There is a vast difference between the situation of a large company and that of a small or medium-sized one.

With regard to personal relations, and particularly in the case of the small businesses that form the principal source of jobs, there is a very specific need for flexibility, simplicity and legal certainty that must be taken into account.

Changes in the legal form of contracts of employment should be accompanied by stronger support measures easing response to economic change, support for the unemployed and training for those who need to recycle themselves.

The idea that the labour market has to be made more flexible without undermining worker security, notably by ensuring access to training and facilitating the return to employment, needs to be brought into sharper focus and translated into more functional terms by giving the notion of security of employment a coherent and effective content. The mechanisms that are adapted or created must enhance the security of individual employment and scope for progression and foster mobility – including voluntary – within and beyond the specific enterprise. They must support the organisation of transitions without the loss of rights linked to the previous situation. These new mechanisms must facilitate the free enjoyment of these rights and encourage initiative and mobility, and must therefore ensure that rights are transferable from one position to another.

There has to be a more global approach to legislation on the protection of employment, providing a better balance between the protection and flexibility associated with different types of work contracts and facilitating the transformation of short-term contracts into contracts of indefinite duration, by smoothing out threshold effects, especially those relating to seniority.
1.2. It is equally important to continue working towards the institution of a “floor of social rights” on the European scale.

An open market of the size of the European Union has to manifest a social order that is the corollary of the principle of freedom. This European social order is based on common social norms, in order to provide all workers throughout the Union with a decent minimum level of protection. The requirement of “decent work” is an objective introduced by the ILO and adopted by the Union.

It implies a clearer ranking of standards: the respective weight of national rules, collective bargaining and Community legislation in the evolution of our labour law has to be more clearly defined. At the same time, it has to encourage corporate social responsibility.

Labour law remains, of course, essentially the province of the Member States, but the Treaty does encourage the Community to “support and complement the activities of the Member States” (cf. Article 137 TEC). It will be difficult to achieve a more integrated European market if the Member States do not share common objectives and principles for the organisation of the labour market and if they abandon the objective of harmonisation through progress that is enshrined in the treaty establishing the European Community and was reiterated in the conclusions of the European Council on 9 March 2007.

Working conditions and the protection of workers’ health and safety are two of the pillars of the European social order, and they need to be fostered and supported. The road to more competitive businesses requires efforts in the sphere of worker health and safety, and demands particular emphasis on the organisation of labour and on the compulsory rules adopted on the Community and the national level with regard to the social order.

1.3. Finally, the labour law and social protection rules established for the domestic and the European market have to be examined in the context of economic competition in an open and global marketplace. In this regard, France notes that the Union ought to make the granting of preferential trade terms conditional upon real respect for fundamental labour and social protection standards. Consideration of the social impact of trade and trade agreements must not be reduced to questions of commercial competitiveness alone. This is a matter of credibility for the vaunted “Social Europe, and a challenge for the European social model.
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?

The public authorities and the social partners share the common aim of on the one hand developing the management-by-objectives of jobs and competences and on the other strengthening the securitisation of employment.

It was their pursuit of this objective that led the social partners, on 19 June 2007, at the behest of the Government, to enter upon a process of national interprofessional talks on this very point.

The securitisation of employment can have two dimensions, one relating to the management of interruptions to the employment relationship, and the other relating to a form of capitalisation of the rights acquired as an occupational entitlement regardless of the legal form of the employment relationship and thus permitting mobility and facilitating transitions.

Enabling mobility between these various employment situations could be approached via a study of the transferability of rights and how to manage such transfers, paying particular attention to the management of these rights.

This is where adaptation of collective agreements and labour law can help diminish the current difficulties of the labour market.

Setting aside its articulation on the national level, it is clear that establishing the principle of the transferability of rights on the European level would constitute a way of improving the mobility of workers and the adaptability of enterprises, and would favour the emergence of a competitiveness rooted in competence, product quality and corporate productivity.
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?

3.1. In the context of the debate launched by the Green Paper, there are two points to be kept in mind:

- on the one hand, the failure to take sufficient account of the productive effect of stable employment relationships, competences maintained and the involvement of employees in their work;

- on the other, the uncertainty relating to ways of effectively establishing a correlation between labour law and the growth of employment and the productivity of enterprises.

3.2. The legislative and contractual framework concerning employment relationships is a vehicle of progress when it:

- provides for a satisfactory balance between the demands of competitiveness, flexibility and adaptability of enterprises and the rights and safeguards of employees. Collective agreements and contract law must play a determinant role in defining this equilibrium. The law must allow the modalities of application the best suited to the realities and constraints of the particular enterprise and its employees to be determined by collective bargaining;

- provides for a social order ensuring employees’ individual and collective rights and their right to health and safety;

- provides legal certainty for the stakeholders, and especially for enterprises, so that recourse to the courts does not become the customary method of regulating labour relations.

3.3. With regard to SMEs, the solution does not lie in a labour law specific to them, which would make them less attractive as employers and thus be counterproductive, but in ensuring that the common law takes account of their specificities.

Simplification needs to be a priority in this respect, with the adoption of appropriate measures that will lighten administrative constraints and costs, which very often have a negative impact on both employment and employees’ rights, not least through circumvention.

It is also urgent that SME-appropriate ways be found to encourage collective bargaining and allow better personnel representation in the SMEs. This point is, of course, one of the objectives of the talks on social democracy that the Government has recently asked the social partners to engage in...

3.4. With regard to individual relationships, and especially in the case of the small enterprises that constitute the principal pool of jobs, flexibility, simplicity and legal certainty are particularly necessary. This can lead to contracts of employment that take these requirements into account (“new job” contracts for businesses with fewer than 20 employees that make it possible to create or anticipate the creation of a great number of jobs) and to appropriate collective solutions (associations of employers,…).
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?

4.1. The regular permanent contract remains the standard legal form governing employment relationships within enterprises and, in the broader context, constitutes a powerful element of social and economic integration and a guarantee of social stability and economic growth. Nonetheless, temporary or fixed-term contracts do reflect forms of organisation and production and serve real needs.

Enterprises create both jobs and wealth, and they must therefore be able to grow, restructure rapidly, be competitive, respond to market fluctuations and adapt to changing technologies. New types of individual employment relationships can bring businesses the flexibility that will allow them to adapt rapidly and to evolve in a context of legal certainty.

4.2. What is important in this context is the conditions in which employment relationships are ended and the effects that ensue. The aim must be to ensure the employee the possibility of retraining and an adequate income until he finds a new job.

The employee must, throughout his working life, be able to improve his training so as to secure professional mobility, whether within the specific firm, within a channel or sector, within an occupation or profession, or within a labour market.

In the same way, severance compensation can, with regard both to sum and to purpose, be an occasion for innovative formulas.

These changes or adaptations to a contract of employment must be accompanied by safeguards for the employee in terms of working conditions, career prospects and mobilisation of rights acquired. These rights, which the employee must be able to build up throughout his working life, have to be personal to him and not attached to a specific firm. He must be able to capitalise them, create a portfolio that he can use in accordance with his needs and plans and by agreement with his new employer. The temporary employment sector has thus organised the portability of short-term employees’ rights so that contractual discontinuity is compensated by an occupational continuity within the branch, the objective being to support mobility without loss of rights acquired, notably by encouraging the take-up of training hours between contracts so as to facilitate access to new jobs and reduce the periods of unemployment.

4.3. Above all, France’s constant goal is to enable those in part-time or non-standard work situations to benefit from proper social protection. The twin characteristics of the French social security system are “generalisation” (progressive extension to all workers of rights originally conceived for “classic” salaried employees and their families) and enhanced protection for certain categories of workers who, by reason of the nature of their activity or the precariousness of their income, might be excluded from the social security system or only partially protected.

The social partners, moreover, are engaged in a dialogue aimed at developing health care protection for employees of small businesses, with the goal of completing their work by the end of this year (2007).
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?

In France’s view, the reforms already implemented, and those that are to be further developed, in the Member States as regards employment protection legislation and support for the unemployed justifies the setting of two objectives:

- **Aiming at a high level of worker protection** on the basis of legislation on meaningful protection of employment – which would not exclude either certain adaptations or reflection on achieving convergence of the various degrees of protection attached to the different legal situations resulting from the segmentation of the labour market, which, as the Green Paper notes, is a very real problem;

- **Achieving better support for the unemployed** and making the public manpower and employment service more effective.

5.1. There has been significant progress in the area of employment protection legislation and support for the unemployed in several Member States

According to the Green Paper, the Member States have made only marginal reforms in the area of employment protection. The only progress, in its view, has been an easing of the rules applying to short-term contracts, with no reform whatsoever of the rules applying to permanent contracts.

Numerous Member States have, however, recently set in hand a variety of reforms that attest to the possibility of adapting the rules and procedures for redundancy and of responding better to the needs of security and flexibility of both enterprises and workers.

In France there have been three recent developments in the field of assistance in relation to economic change that are worth mentioning in this context:

- collective bargaining has been strengthened through provisions for the conclusion of agreements on method. This legislation has thus made it possible to adapt and safeguard procedures in terms of the specificities of the enterprise;

- “cold management” of economic change has become more widespread, with the introduction of a three-year negotiation obligation on the management by objectives of jobs and competences in enterprises with a workforce of more than 300;

- more account has been taken of the territorial dimension of economic change, notably with the obligation to revitalise pools of employment and create job centres.

Two tools have been created to ease economic change, taking account of both the need for retraining and the needs of enterprises and territories: the agreement on personalised retraining and, on an experimental basis, the transitional contract. The aim of these two mechanisms is to protect persons who lose their jobs through better compensation and through improved retraining actions.

The social partners have also, in the framework of the new unemployment insurance agreement concluded in December 2005, instituted new or strengthened existing support measures intended to speed up the return to employment and in better conditions: examples include assistance with training, assistance for mobility, tapering assistance to the employer and support for professionalisation contracts.

The primary objective being to reduce periods of unemployment, the priority of the new mechanisms has been to mobilise as wide range as possible of support measures for those who lose their jobs.

These mechanisms have, moreover, had a positive effect on small businesses, since employee training obligations (and measures) did not previously apply to small businesses.
5.2. Evolution and improvement

The security of career prospects and the review of the unemployment insurance system are two of the top priorities of the dialogue that has recently been opened on the modernisation of the labour market. Some of the key points that need to be examined in this framework are:

**Balancing priorities** in redundancy management between anticipatory job considerations, severance compensation and personnel retraining.

**Reinforcing personalised support** for the unemployed and improving job search follow-through, according to a logic of rights and assumption of responsibilities, leading to a strengthening of the modernisation of the public manpower and employment service.

**Improving the unemployment insurance system**

**Improving**, notably for cases of restructuring, **co-ordination between those who finance vocational training** (the social partners, the public manpower and employment service, local associations and authorities) and those who carry it out.

**Developing a more integrated approach to employment protection legislation**, by improving the balance between protection and flexibility in the various types of work contracts and easing the passage from short-term contracts to contracts of indefinite duration.
6.1. In the framework of the objectives laid down by the Lisbon strategy, the French vocational training system has been thoroughly overhauled. A process of reform was begun in 2003 with the national interprofessional agreement of 5 December 2003, which gives employees lifelong access to vocational training. This agreement has been extended on the one hand by the law of 4 March 2004 concerning lifelong vocational training and the social dialogue and, on the other, with the conclusion of numerous agreements on the level, particularly, of specific occupations.

6.2. These reforms have strengthened the role of the two basic players in the domain of vocational training: the social partners in the various occupational sectors on the one hand and territorial associations and authorities on the other, the regions being at the heart of the needs of the economic operators and the needs of the territories. The social partners have always played the determinant role in the definition and management of vocational training, with the legislator more often than not, as seen in the law of 4 March 2004, merely putting the final legal touches to the terms of the social agreement.

6.3. It is important to remember that businesses have social responsibilities that contribute to the smooth operation of the labour market, the anticipation of developments in employment and occupations and the securitisation of the life-cycle careers of individual employees. Lifelong training is one of these responsibilities.

6.4. Public policy in this domain therefore has to be mobilised and organised in support or in the service of the securitisation of transitional employment situations.

Thus, vocational training systems and the means allocated to them, such as vocational training funds, could be used and mobilised more extensively in situations of economic change. This presupposes a reinforcement of consultation and decision-taking procedures between the local authorities and the social partners.

6.5. Training rights should, in addition, be made transferable across the individual’s working life.
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 question of transitions from employment to self-employment and vice versa does need to be clarified by legal definitions that will allow the effective, transparent and bona fide application of legal, social and fiscal systems. But, from the point of view of the individuals involved in transitions between these states, the question is also one of the correspondence of, and possibly continuity between, the protection systems applicable to the different stages.

7.1. The Green Paper mentions the increasing difficulty of distinguishing between employment and self-employment. This is a real difficulty, given that some employment situations are hybrids between the two.

However, the criteria that have been defined by case law are well tested and make it possible to identify the link of subordination that determines an employment situation.

7.2. With regard to social protection, it should be noted that the French reforms tend towards the generalisation and harmonisation of the coverage afforded by the different compulsory schemes. Moreover, the universalisation of “family” and “health” branches limits the impact of the legal definition of different forms of activity.

The “optimisation” of the choice of place of activity or place of residence according to the legal definition of the activity and, a fortiori, circumvention of the rule have consequences for the social security systems and the operation of the internal market (“social dumping”, inequality of treatment, distortion of competition, etc.).

The proper application of Community rules therefore requires that national rules be clear and familiar, especially since they tend to ease the passage from one status to the other.
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?

An open market of the size of the European Union has to manifest a social order that is the corollary of the principle of freedom.

This European social order is based on the construction of a basic foundation of social norms, concerning notably the protection of health and safety in the workplace, working time, etc., in order to provide all workers throughout the Union with a decent minimum level of protection.

The requirement of “decent work” is an objective introduced by the ILO and adopted by the Union, it being understood that the protections and rights that define “decent work” will evolve in each society according to its economic and technological development and its capacity to build policies of equality and solidarity.

Employee posting (Council Directive 96/71/EC) is case in point: a certain number of rules concerning working conditions are applied to any foreign employee working in France in the framework of the provision of a service.

The same applies to temporary employees, who throughout the period of their contract must enjoy, whether in France or elsewhere in the Union, the same working conditions as the permanent employee of the user enterprise.

Apart from measures concerning working conditions, there are also a certain number of principles that ought to be affirmed, aiming at compliance with provisions relating to access to collective agreements, freedom of expression, recourse to the courts in case of dispute, rules of burden of proof and against discrimination. These measures form a basic foundation of binding provisions that safeguard the protection of employees, regardless of the legal form of their contract of employment.
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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”?

This is a question of corporate social responsibility. It is clear, however, that an appropriate legal framework remains the way to ensure effective protection both in the case of a chain of sub-contracting and in that of “opportunistic” outsourcing.

With the development of new forms of business organisation and economic channels, the issue has become one of some urgency.

9.1. France’s legislative framework provides a system establishing joint responsibility between clients and sub-contractors.

Thus, for example, a client who, in certain conditions, has not made a certain number of checks when contracting with a service provider, can be held jointly responsible for the payment of sums due to the employee, the social insurance organisations and the tax authorities in the event of default, bankruptcy or disappearance of the enterprise that performs disguised work.

Moreover, in order to ensure that principals that find themselves in economic difficulties behave responsibly and to allow sub-contractors to anticipate or swiftly limit the difficulties that may ensue indirectly, French law provides for an obligation of information. The labour code requires that in the event of a plan to restructure or down-size that is likely to affect a sub-contractor’s volume of activity and volume of employment, the latter must be informed immediately, on condition that the latter enterprise inform its personnel representatives.

9.2. On the European level, as support for the internal market, establishing shared joint responsibility principles in the framework of an integrated economic and social approach would be a useful initiative.

Economic measures can further employment and operational stability in sub-contracting enterprises, as illustrated by the agreement in the automobile accessories sector aimed at reducing the principal’s payment periods.
There does indeed appear to be a need for the French government to clarify the employment status and safeguard the rights of temporary agency workers.

**10.1. French legislation** defines the whole set of individual and collective rights intended to ensure that temporary workers are treated in the same way as the permanent employees of the user enterprise, in conformity with the principle of non-discrimination or equality of treatment.

Thus, as regards individual rights:

- a temporary employee is entitled to remuneration (salary plus all the benefits and incidentals attached to the position held) that cannot be less than what an employee with equivalent qualifications occupying the same position in the user enterprise after a trial period would receive; and to

- pay in lieu of holidays that is equal to one tenth of the total sum received over the duration of the contract, plus, save in certain cases, an end-of-contract payment equal to one tenth of the total sum received as compensation for casual employment;

- premature termination of a fixed-term contract of employment is regulated by the labour code in order to safeguard the stability of the contractual relation; otherwise, the employee finally enjoys a right upon premature termination of contract when he becomes entitled to a contract of indefinite duration;

- the working conditions of the temporary employee are governed by the legal, regulatory and contractual measures applicable in the work place. He thus enjoys the same working conditions as the permanent employees of the user enterprise as regards hours of work, night work, weekly rest period and public holidays, health and safety rules and rules on the terms and conditions of the employment of women, children and young people;

- a temporary employee is also entitled to access, in the same conditions as the permanent employees of the user enterprise, to its means of collective transport and its collective facilities.

As regards collective rights:

- temporary employees have the right to participate in the management of their enterprise through its employee representation associations;

- in the user enterprise, during the term of their contract, temporary employees can have their demands with regard to pay, working conditions and access to collective facilities and means of transport presented by delegates of the work force. They are, moreover, counted pro rata temporis on the payroll of the user enterprise for the calculation of thresholds;

- the user enterprise’s employee representation associations have a right of information and control over the use of temporary workers.

**10.2. On the European level,** France supports a directive on temporary work.

France hopes that it would enshrine the principle of equality of treatment as of the first day of a fixed-term contract, and not after a certain time at the enterprise, and the principle of legal certainty of a system that has proved to be useful on the national level.

From the point of view of social protection, while the regulations concerning the co-ordination of the social security systems of the Member States in this domain are clear and adequate, Community tools for cross-border control and mutual administrative assistance need to be developed in order to see that they are properly applied and to combat abuse.
11. On the whole, Community rules with regard to the organisation of working time, which affect human health and safety, provide a satisfactory compromise between the necessary flexibility and a high standard of protection of workers’ health and safety.

The European Union must however resolve the question of a common standard for the length of the working week, even if it is understandable that this standard will have to have a certain margin of flexibility across the Community.

The proposed review must also take account of the need to work towards a good balance between family life and working life, as the Lisbon strategy encourages the Member States to do.

11.2. The priorities that the review of the European working time directive should focus on are:

- revising the notions of working time and rest period defined in Article 2 of Council Directive 2003/88/EC in order to clarify the legal status of on-call time: since the definition of on-call time adopted by the courts has a powerful impact on such essential public services as health and social protection, any new definition of on-call time must take account of the particularities of different countries and sectors and allow for the necessary adaptations that will guarantee the effectiveness of the Community standard.

- ensuring a minimum collective framework meeting employee health requirements that cannot be adapted or derogated by individual agreement;
12.1. The employment rights of workers operating in a transnational context, and in particular frontier workers, must be assured throughout the Community, on two levels:

- on the one hand by the introduction of European Union standards laying down minimum fundamental rights for all EU workers (cf. reply to Question 1);
- on the other, by the application of the principle of equality of treatment for employees in the framework of free movement and of the labour law of the host country as defined by the directives on the free provision of services and on posting.

Articulation of this double platform of rights is the best way of ensuring the upward harmonisation of the rights of European workers.

12.2. Council Directive 96/71/EC on the posting of workers in the framework of the provision of services defines (Art. 3) the employment and working conditions of posted workers in the host country. This enumeration constitutes the minimum basic foundation of rights guaranteed to workers, without prescribing aspects of the actual contract of employment that are regulated by the legislation of the country of origin under reserve of the provision of the Convention of Rome.

Enforcement of those rights depends on the one hand on the effectiveness of the transposition of the Directive by the Member States and, on the other, on the institution or strengthening of information and control mechanisms:

- information for contracting enterprises on the legislation, regulations and contractual rules applicable in the country where the service is provided;
- information for workers on their rights and the means of gaining these rights;
- information for monitoring bodies, notably via the preliminary declaration.

These controls will be reinforced by:

- training and methodological support for labour inspectors;
- the action of liaison offices;
- co-ordination by the Commission (multi-language forms, etc.).

12.3. The reply to the question concerning the definition of ‘worker’ could be qualified, on the national and the Community level alike, depending on the priorities, positions and/or responses of other Member States and how the Directives are drawn up.

The solution could be to allow the Member States a certain margin of discretion in the context of their transpositions of the directives, while adding clarifications relating to the specific field to the definition of worker used by each Directive (examples: Directives 2002/14 concerning information and consultation; 2001/23 concerning transfers; 96/17 concerning posting; 91/533 concerning the employer’s obligation to inform employees of the conditions applicable to the contract or employment).
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 co-operation?

13.1. Administrative co-operation is essential to the constitution of a common foundation of rights and references. To this end, it must be able to rely on the essential co-ordination so usefully provided by the Commission through groups of experts (notably SLIC\textsuperscript{7} and the group of experts on application of Directive 96/71/EC on the posting of workers in the framework of the provision of services).

With regard to the application of Directive 96/71/EC, co-operation between the relevant authorities of the Member States has increased in recent years with the creation of shared tools, including summaries of the labour law of each Member State, codes of conduct, multi-language forms and support for liaison offices.

13.2. France has bolstered this administrative co-operation with a number of bilateral agreements on combating illegal work and in the domain of the transnational hiring-out of workers and, wishing to carry this form of co-operation further, is currently engaged in negotiating new bilateral agreements with other Member States\textsuperscript{ii}.

13.3. From the point of view of social protection, strengthening administrative co-operation is a key issue and a top priority. As the Commission has noted, transnational business activity, which constitutes the foundation of the internal market, requires coherent application of the different national sets of social security laws.

The co-ordination rules, however, apply primarily to the rights of workers and individuals, without taking into account the interests of systems and how they are financed and supported. They provide no answer either to the strategies that use social security systems as an element of competitiveness or to misappropriations and fraud.

France is therefore in favour of any Community initiative that will introduce co-operation between Member States in this domain. In the meantime, we will continue to propose bilateral actions with other EU countries.

13.4. The role of the social partners in co-operation in enforcing Community labour law is an important factor that depends on several vectors:

- the support of networks of social partners on the European level, which boosts the awareness of all stakeholders, employers and/or outside contractors and employees alike, to this necessary co-operation;

- the commitment of multinational corporations to promoting, by agreements or social responsibility charters, the social rights of their own workers and of those employed by their sub-contractors, so as to ensure working conditions, qualifications and health and safety conditions that meet basic labour standards\textsuperscript{iii}.
Do you consider that further initiatives are needed at an EU level to support action by the Member States to combat undeclared work?

14.1. First of all, the notion of undeclared work, defined as any paid activities that are lawful as regards their nature but have not been declared to the public authorities, must be formulated in a common definition embracing both the absence of declaration to the labour inspectorates, social protection administrations and tax authorities and also the irregular employment of persons under an inappropriate legal status (self-employed persons, volunteers).

The adoption of a legal instrument (recommendation, resolution, etc.) on undeclared work could constitute an important step following up the study carried out by Inregia AB and Regioplan BV for the European Commission.

14.2. With regard to the posting of workers, there can be no effective combating of undeclared or disguised work unless the fraudulent activity relating to the posting of workers in the framework of the provision of services referred to in Article 4 of Directive 96/71/EC (manifest abuses or possible cases of unlawful transnational activities) are harmonised or correlated with that described in Article 14 of Regulation 1408/71/EEC concerning the application of social security systems to workers who move within the Community, so as to avoid situations where a posted employee could be in order as regards social security but not as regards the rules on posting laid down in the Directive, as was examined in the case of Herbosch-Kiere n.v.

If achieved, this objective would allow liaison offices to provide information to control bodies on the application of rules on the posting of workers and on employees’ affiliation to national social security organisations.

Finally, it is necessary, in cases of manifest abuse relating to posted workers, to provide for a process for checking the validity of E 101 certificates with the issuing authorities that is faster than that set up by Regulation 1408/71 through the Administrative Commission for the social security of migrant workers, since control services need to be able to obtain answers from these bodies within a reasonable period of time.

14.3. Combating undeclared work is also a key issue and a top priority from the point of view of social protection. Transnational business activity requires coherent application of the different national sets of laws. The variety of national social security systems results in disparities in terms of mandatory rules, extent of coverage and modalities of extension of rights.

France is therefore in favour of any Community initiative that will initiate co-operation between the Member States in this area for the development of Community information tools that will help safeguard the effective continuity of social rights in this domain. In the meantime, we will continue to propose bilateral actions with other EU countries.

In the framework of the European strategy for employment and its implementation, and following the many Resolutions adopted by the decision-making bodies of the European Union, France and Italy in February 2004 launched an important co-operation network project, financed by the European Commission through the “Mutual Learning and Knowledge Sharing” programme.

The Commission could support the European network project and extend it to other Member States, so as to consolidate the work already done and construct a suitable framework for achieving the objectives set by the partners in this network.

14.4. Finally, the role played by the social partners in combating undeclared work is equally indispensable. It is manifested essentially in the conclusion of partnership agreements with public services bearing on commitments to combat illegal work and failure to declare activity or the
employment of personnel, vigilance with regard to fraudulent practices and their harmful consequences for employment and the financial resources of the social security institutions and the public purse, and in actions designed to help eliminate the conditions that favour undeclared or illegal work.
Senior Labour Inspectors Committee, set up on 12 July 1995.

Especially agreements concluded or in the process of being negotiated with Germany, Belgium, the Netherlands, and on-going talks with Portugal, the Czech Republic, Poland, Bulgaria and Romania.

EDF (agreement on socially responsible sub-contracting of 19 October 2006) and France Télécom (global agreement on social rights of 21 December 2006).

Undeclared work in an enlarged Union (EU0407204F), 2004.

ECJ decision, 26 January 2006, HERBOSCH-KIERE NV.

Communication of the European Commission of 4 April 2006 “Guidance on the posting of workers in the framework of the provision of services”.

Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 22 April 1999, on a Code of Conduct for improved co-operation between authorities of the Member States concerning the combating of transnational social security benefit and contribution fraud and undeclared work, and concerning the transnational hiring-out of workers.


Council Resolution of 20 October 2003 on transforming undeclared work into regular employment.

EESC opinion of 7 April 2005 on “The role of civil society in helping to prevent undeclared work”.