

dti

European Commission Green Paper,
'Modernising labour law to meet the
challenges of the 21st century'

UK response

MAY 2007

1. What would you consider to be the priorities for a meaningful labour law reform agenda?
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?
3. Do existing regulations, whether in the form of law and/or collective agreements¹, 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?

Question 1

Any approach to labour law must be seen in the context of both business and the workforce. These interests are not mutually exclusive; we can ensure that economic progress is consistent with social justice.

The UK is committed to full employment and social inclusion. Jobs are at the heart of both economic progress and social justice; competitive success comes from an effective workforce and for most people a job is the way to realise their potential. Employment enables people to provide for themselves, their families and their future. Jobs also lead to social inclusion because work is the best route out of poverty and prevents people from falling into poverty in the future.

The dominant feature of the world economy is the expanding reach of global economies into national economies. Europe must be competitive if it is to continue to make the economic and social progress valued by its citizens. That is why we have agreed a Lisbon Agenda focussed on “jobs and growth” which remains our focus for future action.

Worklessness remains the key social challenge in Europe with around 18 million unemployed and over 90 million economically inactive. Labour market performance must be addressed if we are to achieve the overall Lisbon employment target of 70 per cent by 2010. Changing demography means broadening labour market participation must be a priority if we are to meet the

¹ As in the UK labour law is delivered through direct legislation, rather than through universally applied collective agreements, questions that refer to both are addressed only from this perspective.

Green Paper on Labour Law: UK response

competitive challenge and are to continue to afford the social protections we value.

So, labour law must be consistent with job growth and encouraging more people to come into and stay in the workplace. To do this, flexibility is essential. Businesses need the flexibility to create jobs and people need flexibility to work in ways that balance their work and family life. This does not mean a trade-off between flexibility and security, they should be mutually reinforcing.

EU labour markets are increasingly diverse. Work is organised differently in Member States reflecting different traditions and structures. As the Green Paper notes, "It has to be recalled that national traditions are very different when it comes to the formulation and implementation of labour law and policy." We have already agreed or have under consideration some EU-wide minimum standards that form a common denominator on which all Member States can build on in the way that is best suited to their circumstances. While respecting national traditions and practices, we need to ensure that where common standards are agreed these can be applied fairly across the EU.

However it is increasingly apparent that one size does not fit all. Whilst we might reach a common understanding about directions and goals the delivery of labour market reform is now for individual Member States. We see little appetite for further significant new EU legislative initiatives at this time. As the Green Paper notes, "Responsibility for safeguarding working conditions and improving the quality of work in the Member States primarily rests on national legislation and on the efficacy of enforcement and control measures at national level."

Where the EU can add value is by providing opportunities for identifying and sharing good practice, data gathering, analysis and as appropriate providing guidance on aspects of policy making, better regulation practice and on enforcement.

Within this framework and context Member States are generally best placed to manage the evolution of their own labour law frameworks alongside other related social policies to deliver Lisbon goals. This is consistent with the "better regulation" principles of subsidiarity. But in considering labour market measures it is important to be clear where legislation is the appropriate tool to achieve labour market objectives. Depending on the nature of the problem, it may be more appropriate to consider whether the answer lies in other mechanisms, for example, achieving better awareness of existing legislative provisions and whether they are being appropriately enforced. There may be circumstances where what is necessary is for initiatives to promote culture or behavioural change amongst employers and/or workers. This all needs to be done in partnership with key stakeholders including from business and trade unions.

Even well functioning labour markets have groups of workers that may be vulnerable in some circumstances. Experience in the UK shows that vulnerability and employment status are not synonymous and it cannot be assumed that any whole category of workers is vulnerable by definition; a whole range of factors have a bearing on whether or not a worker is vulnerable. The root cause of vulnerability is very often lack of skills. Basic skills (including language skills) are more important than ever for entering the labour market. Vulnerability can also result from abuse of existing systems i.e.: not because of lack of rights but because rights are denied. In these circumstances it is necessary to address lack of awareness or abuse in the specific circumstances in which it occurs.

In the UK we are tackling vulnerability through a range of measures detailed in our policy document “Success at Work² - protecting vulnerable workers, supporting good employers” (March 2006) which commits the Government to protecting vulnerable workers, cracking down on rogue employers and lightening the compliance burden for legitimate business. For example, the UK Department of Trade and Industry is funding two pilots to support vulnerable workers and help their employers to comply with employment rights legislation³.

Labour law is therefore only part of the picture. The onus is on the Member States to identify where there is need for reform in their own legal frameworks and social systems.

Where legislation is seen as the appropriate way forward – this should be framed in ways that take account of business, employers and workers through full consultation and appropriate impact assessments. Overly restrictive legislation can damage job creation and the effective functioning of labour markets.

In the UK, we have created one of the most successful labour markets in the world, with more people in work than ever before and the highest employment rate in the G8 whilst unemployment remains at a low level. Our approach has been based on combining social justice with economic prosperity so that businesses grow and employment expands, delivering opportunity for all. Since the beginning of 1997, there are 2.5 million more people in work and unemployment remains at a low level. Significant progress has also been made in increasing labour market participation. For example, there are more women in work than ever before.

² <http://www.dti.gov.uk/employment/employment-legislation/success-at-work/index.html>

³ Two pilot partnerships are under development; one led by the TUC in the City of London and Canary Wharf focused on workers in cleaning and building services; the other led by Marketing Birmingham focused on employers and workers in Birmingham’s hospitality sector. The pilots will develop local partnerships with unions, business groups, local authorities, community groups, government agencies and others to help vulnerable workers secure their employment rights, and put them in touch with opportunities to develop their skills. They will also help employers to comply with the law, and help raise workplace standards.

The UK labour market is characterised by diversity and flexibility with one of the widest range and types of job and ways of working available in the world. This means workers and employers have more choice over the type of employment that suits them. We have the second highest job satisfaction rate in the EU and the second lowest rate for the fear of losing a job in the next 6 months⁴. Also, our record on health and safety at work is one of the best in the world.

Questions 2 to 4

While traditional permanent employment contracts continue to be the first choice for many, it is important to also allow for new and flexible forms of work that meet the changing needs of business and workers. UK experience shows that legal frameworks can allow for that diversity without creating a “two-tier” labour market, by enabling different types of contract and allowing for easy transitions between them. Firms need to be able to restructure and adjust to change. Instead of stopping them, we need to ensure a policy framework that support transitions. This is not primarily a matter of labour law but includes education and skills and active labour market policies to help people to find and to change jobs. The onus is on Member States to ensure that national structures do not impede transitions but rather help people to manage change.

Traditional employer/employee contracts remain the cornerstone of working life. But where traditional contracts are too rigid, or over-protect labour market insiders at the expense of those not in work, distortions can occur. Evidence suggests that overly restrictive legal frameworks, that place undue burdens on employers and assign very high levels of rights only to permanent employees, have the opposite of the intended effect by depressing the creation of permanent jobs resulting in much higher levels of temporary and atypical work and also risk forcing jobs into the informal/illegal sector. (e.g. see Chapter 2 of Employment in Europe 2006).

In the UK we have shown that proportionate regulatory frameworks can provide rights for workers without stifling job creation or creating two-tier labour markets. In consequence some 94 per cent of the UK workforce works under traditional contracts, with only around 6 per cent on temporary and agency contracts.

A key aspect of the UK labour law framework is that not just employees but other workers, including agency workers⁵, are entitled to certain rights

⁴ European Foundation for the Improvement of Living and Working Conditions: Fourth European Working Conditions Survey (2007)

⁵ In the UK, a “worker” means an individual who was entered into or works under (or where the employment has ceased, worker under)-

- (a) a contract of employment; or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by

including those associated with equality of opportunity (non-discrimination), a national minimum wage, health and safety in the workplace, working time entitlements such as paid annual leave, daily and weekly rest breaks, protections against unlawful deductions from wages and the right to be a member of a trade union. But providing for variation in the balance of other rights and responsibilities for workers that are not employees provides for the benefits of diversity for both business and workers. For example, in the UK, we have a thriving agency and temporary work sector that is a key part of our economy and in which many choose to work for positive reasons. But this is not at the expense of permanent jobs, which are increasing in number.

With regard to small firms, we must make sure that labour law does not discourage firms from taking on staff. European SMEs are key to delivering the Lisbon objectives of stronger growth and more and better jobs. They make up a large part of Europe's economy: there are some 23 million SMEs in the EU, providing around 75 million jobs and accounting for 99 per cent of all enterprises. A proportionate, fair and comprehensible regulatory environment is essential for the growth and development of small firms. In all cases, it is important that employers and workers are aware of both their rights and responsibilities in any working relationship. This can be achieved through readily available guidance and information provided for both and by ensuring that effective systems are in place for dispute resolution and to enforce those rights and responsibilities.

In the UK, we provide an online one-stop shop to provide a single source of employment law information for individuals⁶. Also, an Advisory, Conciliation and Arbitration Service (Acas) has always been a major source of information and advice and demands on its helpline are growing, both from employers and workers⁷. The TUC also produces leaflets on individual's rights at work and maintains the workSMART website to help working people get the most out of the world of work⁸. "Business Links" provides information on employing people on their national webpage⁹ and regional business links regularly hold Employment Law Update events to provide their members with information on the rights and responsibilities of their staff.

5. 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?

the individual; (Ref: Statutory Instrument 1998 No.1833, Terms and conditions on employment- the Working Time Regulations 1998).

⁶ See: <http://www.direct.gov.uk/Employment/fs/en>

⁷ See: <http://www.acas.org.uk> - Acas (Advisory, Conciliation and Arbitration Service) aims to improve organisations and working life through better employment relations. They provide up-to-date information, independent advice, high quality training and work with employers and employees to solve problems and improve performance. Founded in 1975, they have 1975 over 30 years experience of working with people in businesses of every size and sector.

⁸ See <http://www.worksmart.org.uk>

⁹ See <http://www.businesslink.gov.uk>

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?

Question 5

Labour law is just one part of a package that includes a range of other measures to encourage and enable people to come into and remain in the workplace. Each Member State must develop the right, sustainable mix of policies in accordance with its own structures and traditions.

Equipping people to manage and take advantage of change, rather than seek to protect specific sectors or jobs is the best way to manage the uncertainties and opportunities of globalization.

Flexibility and security should be mutually reinforcing; it is not a trade-off between one of the other. This can be done by providing insurance in the broadest sense, including through: skills and retraining, unemployment benefits, conditions suitable for high job creation, making sure work pays by ensuring reasonable levels of income (as we do in the UK through the national minimum wage and other measures of income support such as working tax credit) and policies on flexible working and child care which make it easier to combine work and family life.

The UK already has one of the most flexible and dynamic labour markets in the world. Each year around 6.5 million people start a new job, responding to incentives in the labour market, progressing by moving from job to job, and helping employers fill vacancies, thus remaining competitive, productive and profitable, as well as curtailing skills shortages.

The UK also has in place a comprehensive set of active labour market policies which help people to make transitions in the labour market. The UK's focus is on helping individuals who find themselves out of work, back into the labour market as quickly as possible. The Jobseeker's Allowance (unemployment benefit) intervention regime is built around the individual and fully focused on the labour market. Individuals are required to actively seek work and the intervention regime promotes continuous job-search by requiring regular attendance at a Jobcentre¹⁰. Under this approach, the payment of benefit is an active labour market measure. This approach means that the majority of people – around 80 per cent - leave the unemployment register within six months. However, for those who need it, extra help becomes available as the duration of unemployment increases through, for example, the New Deals which are targeted on the long-term unemployed.

¹⁰ Jobcentre Plus remains at the heart of the UK's active approach, which is a key factor in successfully increasing employment. On every working day, Jobcentre Plus now conducts 43,000 advisor interviews and helps around 7,000 people find work. By combining payment of benefits with active labour market interventions for customers, Jobcentre Plus provides a service based on the needs of the individuals and helps to maintain continuous attachment with the labour market. See: <http://www.jobcentreplus.gov.uk/JCP/index.html>

Whilst UK unemployment is at one of the lowest levels it has been in its recent history, there continues to be people who are inactive in the labour market, and claiming key out of work benefits. We are progressing welfare to work policies to help those currently out of the labour market into employment and into a position where they too can benefit from a flexible, dynamic labour market. Policies have been introduced offering lone parents and those on incapacity benefits the help and support they need to make the transition from benefit to work.

Question 6

We understand this question to mean how can access to training and transitions between forms of employment be implemented through various means, rather than suggesting more labour law should be established via the route of collective agreements between the social partners.

Employment legislation should be flexible enough and complementary with other policies to aid transitions in the labour market. However, labour law is not in itself the key mechanism for delivering training opportunities.

Evidence suggests that proportionate law frameworks (together with active labour market policies) are associated not only with higher numbers of permanent contracts but also ease of transition between different types of contract, thus avoiding the kind of two-tier labour markets experienced elsewhere (e.g. see Chapter 2 of *Employment in Europe 2006*)¹¹.

In the UK some 94 per cent of the workforce works under traditional contracts, with less than 6 per cent on temporary contracts. It is not the case that UK temporary workers are all in low-status or low-pay jobs. For example, an estimated 25 per cent of temporary workers work in managerial and professional positions.¹²

Evidence suggests that, in the UK, the availability of agency and short-term contracts also provides an entry route to employment for those with limited work experience or under-developed skills. According to figures for 2006, 24 per cent of agency temps in the UK were unemployed or inactive one year ago¹³. Across the EU, 40 per cent of young people have temporary contract compared to 14 per cent of workers overall. However, the temporary work sector is also varied across the EU. The EU average of 14 per cent covers a wide range of figures from around 4 per cent in Malta to 33 per cent in Poland¹⁴.

¹¹ UK Longitudinal Quarterly Labour Force Survey data suggests that between 2005 q2 and 2006 q2 around 520,000 workers transferred from a permanent position to a temporary one, and around 330,000 moved from a temporary post to a permanent one over the year. Also, a quarter of temporary employees changed the type of contract they were on over the year.

¹² Labour Force Survey (LFS) data 2006, Q4

¹³ Labour Force Survey (LFS) data 2006, Q4

¹⁴ Eurostat EU-Labour Force Survey (LFS) 2006 Q1

For people to come into the workplace, they must be able to work in different ways to combine work and family life. Sometimes people want to work more, to earn more money for their families and at other times want to work less for example to combine work and child care or to phase into retirement. Part-time work offers people flexibility to combine work with other priorities. Around a quarter of all employment is part-time in the UK. The majority of people who work part time – over 70 per cent - do so because they do not want a full-time job and just 9 per cent of those working part-time say they are doing so because they cannot find a full-time job. And whilst many people want permanent jobs – others may prefer a series of temporary jobs perhaps to gain a range of experience or perhaps because they want to work only when they chose. It is important that people are able to make use of more flexible forms of work for positive reasons and also that they are able to move between different forms of work contract.

The UK is taking steps to bridge the gap between employability and skills. The Government is currently considering the Leitch Review of Skills' recommendations and is expected to publish a response in Autumn 2007. Efforts thus far have focused on the formation of an employer-led Commission for Employment and Skills and the development of an integrated employment and skills service, which will play a key role in aiding the transition into work. The UK has one of the highest rates for employees who received paid training over the past 12 months in the EU¹⁵.

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*?

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?

Question 7

We do not believe that UK definitions of employment and self-employment need to be amended. We believe our present legal framework reflects the wide diversity of working arrangements and the different levels of responsibility and associated rights in different employment relationships.

In the UK, an individual's employment status is relevant for taxation purposes and entitlement to employment rights. There are no barriers to prevent individuals moving from one status to another or being both self-employed and employed in differing jobs or roles at the same time as long as they have the appropriate status which reflects the reality of the situation.

¹⁵ European Working Conditions Survey (2005)

Individuals who are, or believe that they are, self employed are obliged to register with the relevant government department as such for tax and national insurance purposes. Where a company has incorrectly treated an individual as “self employed” rather than “employed” this may come to the attention of the Government authorities in a number of ways and the company may be liable for unpaid tax and national insurance and, where appropriate, financial penalties. Individual tax payers can also be the subject of compliance enquiries. It is, therefore, not in the interest of an employer to maintain that its workers are self-employed when, given the facts of the situation, they are not. Individuals who are concerned about their tax status can contact the relevant government department to question their tax treatment directly – or they could use an on-line Employment Status Indicator (www.hmrc.gov.uk/calcs/esi.htm).

Member States national conditions, law and practice differ considerably and therefore a "one size fits all" approach would not be desirable or practical. The huge variety across the EU in terms of definitions of employment does not lend itself to harmonisation. Member States need to ensure that they provide proper advice and guidance so people know where they stand in terms of their employment status and tax position within their national systems.

Question 8

The UK's experience is that providing a package or framework of certain rights for workers and employees is an essential component of a flexible and fair labour market. It is a matter for individual Member States as to what the “floor of rights” should be to reflect national circumstances.

In the UK, all workers, not just employees, are entitled to certain rights including those associated with equality of opportunity (non-discrimination), a national minimum wage, health and safety in the workplace, working time entitlements such as paid annual leave, daily and weekly rest breaks, protections against unlawful deductions from wages and the right to be a member of a trade union.

The UK's present legal framework reflects the wide diversity of working arrangements and the different levels of responsibility and associated rights in different employment relationships. We have shown that proportionate regulatory frameworks, drawn up in full consultation and having done full impact assessments, can provide rights for workers without stifling job creation. Legal frameworks can allow for diversity without creating a “two-tier” labour market, by enabling different types of contract and allowing for easy transitions between them.

In the UK we also have a comprehensive welfare state that covers people in all forms of employment. It is for Member States to determine the right system of social protection for their individual circumstances.

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"?

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

Question 9

All individuals should be aware of what their rights are, who is responsible for delivering those rights, where to go for advice and how to seek redress if their rights and entitlements have been infringed or impeded, which can be done at Member State level. This does not mean that all individuals have to have a single, identified employer in order to have the rights to which they are entitled. In multiple employment relationships, different people can be responsible for different rights. What is important is clarity.

We need to take into account the wide diversity of national practice in terms of employment status (a point made clear by many EU Member States at meetings in the ILO on this subject over the last few years). The method by which this essential clarity is provided does not need to be the same in every circumstance or in every Member State.

In the UK, we believe that our present legal framework reflects the wide diversity of working arrangements and the different levels of responsibility and associated rights in different employment relationships.

We are also tackling vulnerability where it exists through a range of measures to provide information and increase awareness of rights. The full range of measures is detailed in our policy document "Success at Work - protecting vulnerable workers, supporting good employers" (March 2006), which commits the Government to protecting vulnerable workers, cracking down on rogue employers and lightening the compliance burden for legitimate business

Question 10

We see no need to further clarify the employment status of temporary agency workers.

In the UK some 94 per cent of the workforce works under traditional contracts, with less than 6 per cent on temporary contracts. However, temporary work, such as agency work, is greatly valued by employers and many individuals. We have a thriving agency and temporary work sector that is a key part of our economy and in which many choose to work for positive reasons. According to Eurostat figures for 2005, only 27 per cent of temporary workers in the UK did such work because they could not find a permanent job. It is not the case that UK temporary workers are all in low-status or low-pay jobs. An

estimated 25 per cent of temporary workers work in managerial and professional positions.¹⁶

Evidence suggests that, in the UK, the availability of agency and short-term contracts also provides an entry route to employment for those with limited work experience or under-developed skills. According to figures for 2006, 24 per cent of agency temps in the UK were unemployed or inactive one year ago¹⁷. Across the EU, 40 per cent of young people have temporary contract compared to 14 per cent of workers overall. However, the temporary work sector is also varied across the EU. The EU average of 14 per cent covers a wide range of figures from around 4 per cent in Malta to 33 per cent in Poland.¹⁸

In the UK workers, including agency workers, are entitled to rights associated with equality of opportunity (non-discrimination), a national minimum wage, health and safety in the workplace, working time entitlements such as paid annual leave, daily and weekly rest breaks, protections against unlawful deductions from wages and the right to be a member of a trade union.

There is sometimes a lack of knowledge about actual rights, associated with an individual's employment status, and how to exercise them – this is not confined to agency workers. What is therefore important is that all individuals knows what their rights are, who is responsible for delivering these rights, where to go for advice and how to seek redress if their rights and entitlements have been infringed or impeded, which can be done at Member State level.

In the UK we are tackling vulnerability through a range of specific measures as detailed in our policy document "Success at Work - protecting vulnerable workers, supporting good employers" (March 2006), which commits the Government to protecting vulnerable workers, cracking down on rogue employers and lightening the compliance burden for legitimate business

Giving everyone the same employment status (and associated employment rights) across all categories of workers would not reflect the fact that there are variable levels of responsibility in different employment relationships. Many temporary agency workers, and those that engage them, value the flexibility of agency work gives them such as the need to give little or no notice when leaving an assignment. Giving such workers other rights would mean the user undertaking and agency would be likely to respond by requiring agency workers to give specific, and potentially lengthy, periods of notice. This would undermine the very flexibility we know both employers and workers value.

It is not, for example, practical to give an agency worker a right to return to a job which by its very nature is no longer likely to exist – in the same way as a

¹⁶ Labour Force Survey (LFS) data 2006, Q4

¹⁷ Labour Force Survey (LFS) data 2006, Q4

¹⁸ Eurostat EU-Labour Force Survey (LFS) 2006 Q1

permanent employee in the user undertaking. Nor is it within an agency's capacity to promise to place a worker in a similar job on return from parental absence as the availability of a similar job is also not within an agency's control. However, a pregnant agency worker or one returning from time away from work is not unprotected. They cannot be discriminated against and has every right to go back on the books of the agency which placed them or any other agency and to seek work for any hours they wish, so are in essentially the same position as before their parental leave.

With regard to the Agency Workers Directive, the UK continues to support the underlying principles enshrined in the current draft. We look forward to debate resuming on these important principles in the Directive in the EU in 2007 and will play our part in helping to reach an agreement.

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?

The UK believes that the time spent working should be a personal choice and strongly supports the continuation of the individual right to opt out of the 48 hour week. At the same time, the UK recognises that the choice to work long hours should be a genuinely free choice for individuals. The majority of workers in the UK and in some EU countries agree, and do not think that Government or the EU should dictate maximum working time limits and believe that the individual should have the right to choose their own working hours.¹⁹

Moreover, the retention of the individual right to opt out is essential for competitiveness - Europe needs flexible labour markets to adapt to globalization. The Lisbon Strategy and the Kok Report both highlighted the importance of flexible labour markets for job creation.

The UK has some concerns that, without the necessary flexibility for individuals to choose their working hours, people that wish to earn additional money by working some overtime (such as when raising a family or saving to buy property) will be forced into the informal/illegal economy to take a second job. In this situation, people could lose the minimum existing working time rights such as paid annual leave and rest breaks and protection against coercion to work longer hours. The UK has one of the highest official employment rates in Europe²⁰ and both non opted-out and opted-out workers are afforded considerable rights and protections.

¹⁹ See FT/Harris survey (<http://www.harrisinteractive.com/news/allnewsbydate.asp?NewsID=1081>) that showed the majority of French, German and UK workers agreed that the Government should not have the ability to limit the number of hours a worker can work in one week. The majority of workers in Britain, France, Germany, Spain and Italy agreed that they would be prepared to work a longer week for more pay.

²⁰ Eurostat data shows that the UK employment rate is the fifth highest in Europe at 71.9 per cent.

The choice to work longer hours is not a health and safety issue – the UK has one of the best health and safety records in Europe for both fatal and non-fatal injuries. Particular types of work which present health and safety risks are covered by horizontal amending directives, which already impose strict limits on working hours.

The solution to the organisation of working time should respect the labour market traditions of all Member States and should not discriminate such that EU citizens can work in particular patterns in some Member States via collective agreements, but are banned from similar patterns of work in a Member State that has a tradition of national legislation. The UK is aware that some Member States use a number of different methods to allow longer hours working, such as implementing the limits per contract or exempting entire categories of workers, rather than implement the opt out. We would oppose the imposition of a single approach upon Member States that have different traditions – a variety of approaches can be equally valid providing there is adequate protection against coercion and measures to guarantee health and safety.

Recent discussions during the negotiation of a new Working Time Directive have also indicated that, increasingly, Member States are seeking a more flexible solution that would give them the right balance between employee protection and a sufficiently flexible climate for business and essential emergency services to operate in.

Europe should be open to the possibility that prescriptive legislation may not work for all 27 Member States at different stages of economic growth. The “right” solution, which will safeguard the preferences and needs of workers while addressing the challenges of globalisation and need to ensure labour market compatibility, may be different for each Member State. However, legislation in this area needs to be legally secure and not open to interpretation by the courts or else Europe will be faced with more difficulties such as those caused by the recent ECJ judgements in this area.

The UK strongly believes that Europe urgently needs a universal solution to solve the problems caused by the ECJ rulings on SIMAP and Jaeger. If Member States are unable to agree a way forward on all aspects of working time legislation as a package, we should aim to make progress step by step. The Commission should not allow difficulties on certain aspects of the Directive to delay finding a resolution to the problems caused by SIMAP and Jaeger. In certain countries these judgements are putting the health and security of EU citizens at risk and action to combat this should be a top priority.

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?

The UK does not believe that it is either necessary or practical for there to be a more convergent definition of 'worker' in EU Directives. It should be for Member States to guarantee workers certain minimum rights and protections within their territory whether locally employed or working across borders.

For example Directive 96/71/EC on the posting of workers in the framework of the provision of services provides that a core nucleus of employment protections are available to workers who are temporarily posted from one Member State to another. If the deployment is not temporary, or in the case of a worker living in one Member State but employed in another (a frontier worker), then the employment rights of that person is guaranteed by the national laws where the employment takes place.

In the UK, all workers are entitled to rights associated with equality of opportunity (non-discrimination), a national minimum wage, health and safety in the workplace, working time entitlements such as paid annual leave, daily and weekly rest breaks, protections against unlawful deductions from wages and the right to be a member of a trade union.

The UK takes the view that indigenous, posted, transnational and frontier workers should have similar access to the enforcement of employment law. Where enforcement is primarily the responsibility of a labour inspectorate or an enforcement agency, then that body should not discriminate in enforcing the laws that apply.

In the UK, the primary method of enforcement of employment law is by means of an individual complaint to an Employment Tribunal²¹. All workers, including posted workers, may assert their rights by making a complaint to an Employment Tribunal to enforce the protections afforded to them by the law.

²¹ In the UK, Employment Tribunals hear claims about matters to do with employment. These include unfair dismissal, redundancy payments and discrimination. They also deal with a range of claims relating to wages and other payments. An Employment Tribunal is like a court but it is not as formal. Like a court, it must act independently and cannot give legal advice. Employment Tribunals are independent from Government, social partners and businesses. All workers may assert their rights by making a complaint to an Employment Tribunal to enforce the protections afforded to them by law.

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?

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

Question 13

It is important to distinguish between co-operation and harmonization. Member States have different labour law systems and means of enforcement and these differences need to be respected.

Arrangements in each Member State should cover all workers on their territory, whether they are indigenously employed (including migrant workers), posted, transitional or frontier workers. Responsibility for employment law protection must therefore fall to the State in which the work is taking place. In the UK, the social partners are subject to the law but have no specified role in enforcing employment law.

Whilst co-operation between the authorities and enforcement agencies of different Member States is to be encouraged where matters of common interest arises between them, different systems and enforcement mechanisms mean that there cannot be a single method of enforcing workers rights. Whilst co-operation can assist with this, it cannot replace the need for the appropriate national arrangements.

The Commission also has its own role in ensuring Member States are implementing EU law. Member States can facilitate co-operation between them by ensuring that details of relevant authorities and/or enforcement agencies as appropriate are readily available.

Question 14

Member States are best placed to consider and address any specific circumstances of illegal work. For example in the UK, as set out in “Success at Work” we are taking steps to crack down on rogue employers who routinely flout the law.

It is important for Member States to consider and address the particular circumstances of illegal work which could range from overly restrictive labour law to external causes. Overly restrictive labour markets have a distorting effect, this could result in more people out of work or at the margins and at the extreme could even run the risk of pushing more jobs into the informal/illegal economy, where they would not enjoy the same rights and opportunities that otherwise exist. In some other circumstances, for example in relation to illegal migrant workers member states may want to co-operate on a bi-lateral basis. The EU can provide opportunities for sharing experience and good practice.

