

## CoESS Comments

### GREEN PAPER –

### MODERNISING LABOUR LAW TO MEET THE CHALLENGES OF THE 21<sup>ST</sup> CENTURY

#### Questions

#### THE KEY POLICY CHALLENGE – A FLEXIBLE AND INCLUSIVE LABOUR MARKET

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

Europe has to face two major challenges: globalization and demography changes. Service industries as private security are less affected by restructuring processes due to globalisation. On the other hand, we face considerable problems in order to attract people for our companies. In this sense, we consider that a labour reform agenda should focus on innovative ways to encourage access to the labour market and to enhance a greater and more efficient mobility of workers: conciliation measures and training focused policies should be improved. These steps should be adopted while finding the right balance between protection, encouragement and upskilling of labour force and due consideration to company needs. On the other side, national particularities should always be considered.

#### **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?**

Due to the special characteristics of our sector, which is a sector that by definition operates 24h a day and 365 days a year, with even extra activities during peak periods, we have always specially supported measures which favour flexibility while ensuring at the same time employment security. We have been able to offer a real job and career perspectives to many individuals traditionally considered as "difficult" groups facing specific entering into the labour market problems (youngsters, long-term unemployed, ....) and this mainly due to the flexibility inherent to our activities.

We do not consider that flexible approaches, mostly based on non-standard contracts, particularly lead to labour market segmentation. This policy is combined with full time contracts in those countries where we specially lack human resources. In this sense, right combination of traditional and innovative contractual figures is beneficial for individuals and companies.

**3. Do existing regulations, whether in the form of law and/or collective agreements, hinder or stimulate enterprises and employees seeking to avail of opportunities to increase productivity and adjust to the introduction of new technologies and changes linked to international competition? How can improvements be made in the quality of regulations affecting SMEs, while preserving their objectives?**

It depends on the concrete content of legislation and/or collective agreements. As long as social partners have been able to freely negotiate measures in order to specifically deal with the sectoral needs, it may have been beneficial. This can be basically analysed from a national perspective. Several countries have a long tradition in keeping a constructive and fruitful social dialogue that has served to consider, amongst others, productivity considerations.

However, we globally consider that most of the measures contained in law/collective agreements may have not been directly focused on productivity needs. On the contrary, they might have hit industries, as private security. These impact to a greater degree on SME´s, and may have led to unfair competition practices.

Rules should be made as comprehensive as possible and as less complicated as possible, not inflicting further restrictions on the companies and seeking to simplify and make it less complicated to be an employer.

**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?**

The requirement for greater flexibility has to be driven as much by business needs and by employee requirements so that combined value is given to the organisation and flexibility to support the employee.

There should be incentives for employers to accommodate flexible work patterns and employment terms and provisions for helping employers recruit a diverse workforce.

Due employment security should never prevent the companies from assuming new personnel when needed, and in this way, preventing the companies from carrying out new activities and projects.

## **MODERNISING LABOUR LAW**

### **Employment transitions**

**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?**

This choice basically corresponds to public authorities, basically from a national perspective. However, we consider that it might be beneficial in terms of protecting the individual. It should never lead to incentives that might even encourage unemployment.

**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?**

Private security social partners, at European, national level and local level, have always supported training as a basic instrument for the future of our sector. We believe that upward mobility could be improved in this way, therefore benefiting the whole economy. Either through law or collective agreements, minimum training requirements should be defined and enforced. Ideally, also specialised, recurrent and on-the-spot training should be favoured through law and CLA's. Equally, there could

be incentives to encourage more secondments to senior roles to gain experience and allow for a return to previous role if not successful.

### **Uncertainty with regard to the law**

#### **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*?**

Greater clarity should definitely be beneficial and would avoid unfair competition practices. Moreover, many national practices show that is it not sufficient to have a definition of "employed" and "self-employed" in the labour law. A combination of social legislation, labour legislation, efficient control mechanisms combined with severe sanctions seems to be the only constructive way to prevent mala fide companies to find their way through the loopholes in legislation and to develop, sometimes at a very large scale, practices of social dumping, illegal means of employment, and bogus self employment. In a sector such as ours, still largely depending on the input of highly trained, socially well covered and decently remunerated staff, this issue is all the more important.

#### **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?**

It might be beneficial as long as it does not lead to additional administrative burden that could increase companies' costs. Not duly considered, phased and evaluated, such an increase might impede job protection and even make some companies non-profitable.

### **Three Way Relationships**

#### **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"?**

Yes. This is particularly important for our industry. Subsidiary could be an option to be considered in those countries where sub-contractors mechanisms are allowed. Transparency should be improved.

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

It might be important to face this issue, while respecting national realities and priorities.

### **Organisation of working time**

**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?**

As stated before, flexibility is a key issue for our sector. Together with the trade unions we have tried to give adequate importance to health and safety considerations in performing our duties. Community approach to working time, while respecting national realities, should lead to improved flexibility.

### **Mobility of workers**

**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?**

While respecting national authorities' role on implementation and interpretation of concrete details, a convergent definition of "worker" could be beneficial for the industry. Mobility must be improved without allowing unfair competition practices.

### **Enforcement issues and undeclared work**

**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?**

Co-operation between national could be positive, although costly and difficult to be enforced. Social partners at national and European level may have a role in this process.

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

This is a crucial issue. More initiatives may be necessary at EU level, while respecting basic national role in this fight.