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Green Paper "Modernising Labour Law to meet challenges of the 21st century"

Briefing Note

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Introduction: The purpose and model of labour law

1. The Hearing for which this briefing paper is written serves for the preparation of the European Parliament's Committee on Employment and Social Affairs (EMPL) initiative report on labour law in the context of the Commission's Green Paper: "Modernising labour law to meet the challenges of the 21st century".[1] An earlier draft of the Green Paper, in September 2006[2] entitled "Adapting labour law to ensure flexibility and security for all" echoed the Commission's focus on employment policy. The final Green Paper has ambitions to transform the nature of labour law itself.

2. The Green Paper declares that labour law's original *purpose* (to offset inequality between employer and employee) and traditional *model* (a secure employment status protected against dismissal) operates to the detriment of newcomers and jobseekers. The *inequality and conflict* which labour law is to address is *no longer between employer and employee*. Rather, the new conflict is between workers with secure employment status and jobseekers. The "modernised" purpose and model of labour law is to address this *conflict between employees ("insiders") and the unemployed and "atypical" workers ("outsiders")*. Employers become neutral observers of this conflict. "Modernised" labour law aims *not* at unequal power and to achieve a balance between employers and workers (flexibility v. security), but at unequal power and to achieve a balance between security (of employees) and inclusion (of the unemployed).

3. The Green Paper declares that its "focus is mainly on the personal scope of labour law rather than on issues of collective labour law". All references to collective agreements are in the spirit of what role might collective agreements play in promoting the flexible individual employment agenda?[3] There is nothing about EU law to *support and reinforce* collective bargaining. This vision of the "modernisation of labour law" stands in apparent contrast with the questions posed by EMPL, which are more consistent with the original draft Green Paper's concern with employment policy, balancing flexibility and security. Unlike the Green Paper, the questions posed by the EMPL do not assume a conflict between insiders and outsiders, with the employer outside as neutral observer. The EMPL questions ask how to increase *both* flexibility and security, *without* implying a trade off or conflict. This is a vital distinction between the two approaches.

4. On the other hand, like the Green Paper, EMPL's questions do not sufficiently recognise the collective dimension of labour law, which, though relegated to the margins, is at least referred to in the Commission's Green Paper. The EMPL may best achieve its objective of increasing both flexibility and security by bringing to the fore the role of collective labour law, and promoting an EU collective labour law capable of achieving this objective.

[1] "Modernising labour law to meet the challenges of the 21st century". COM(2006) 798 final, Brussels, 22.11.2006. The task of this briefing paper is to respond to eleven questions stipulated in an e-mail from Christa Kammerhofer-Schlegel, dated 2 March 2007. This briefing paper addresses all the questions, but not all answers are equally detailed, reflecting time and space available.

[2] Communication from the Commission, Green Paper, "Adapting labour law to ensure flexibility and security for all" (n.d.).

[3] See Question 6 posed by the Green Paper.

1) How is it possible for Member States to foster flexible labour markets combined with a high level of social security for the unemployed and short transition periods between jobs?[4]

5. One of the Member States most successful in achieving flexible labour markets combined with a high level of social security for the unemployed and short transition periods between jobs is Denmark. However, the Danish model is characterised by relatively high expenditure on social security and active labour market policy as a proportion of GDP (3-5 %). This presents problems of a budgetary nature for Member States where expenditure is much lower. It poses particular difficulties for EU intervention, as social security is a jealously guarded Member State competence.

6. "Modernising labour law" through EU intervention is possible, therefore, only through promoting the emulation of active labour market policies. This is ostensibly the function of the European Employment Strategy implemented through the "open method of coordination". Its success is disputable.[5]

7. However, the Danish model (like that of Sweden and Finland) is also characterised by high trade union membership and the active engagement of trade unions in managing unemployment insurance.[6] EU labour law has encouraged trade union membership by promoting the role of collective representation in a number of directives.[7] In light of declining trade union membership and failures of these directives to secure collective representation[8], EU labour law needs to provide more effective protection for the fundamental rights of association, collective bargaining and collective action. EU labour law promoting trade unions could achieve better results in the form of flexible labour markets. In particular, it could influence Member States towards the engagement of trade unions in managing active labour market policies, including short transition periods between jobs.

8. In contrast to the Green Paper, flexible labour markets are not achieved by reducing job security (employment protection legislation). Rather, they are associated with high social security for the unemployed in systems characterised by high trade union membership. Modernisation of labour law should reinforce trade union membership and trade union engagement in unemployment insurance systems with a view to promoting flexible labour markets.

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[4] Cf. The Green Paper's Question 5.

[5] In November 2004, Wim Kok, former Prime Minister of the Netherlands, presented the report of a High Level Group on the Lisbon Strategy which had been requested by the Commission. Report from the High Level Group chaired by Wim Kok, *Facing the Challenge. The Lisbon strategy for growth and employment*, Office for Official Publications of the European Communities, November 2004. The Kok Report had harsh things to say about the process of its implementation: (p. 42) "The open method of coordination has fallen far short of expectations. If Member States do not enter the spirit of mutual benchmarking, little or nothing happens". See Janine Goetschy, "The European Employment Strategy and the open method of coordination: lessons and perspectives", (2003) 9 *Transfer: European Review of Labour and Research* (summer, no. 2) pp. 281-301.

[6] "Unemployment insurance and trade union membership", *European Industrial Relations Review* No. 392, September 2006, pp. 20-24.

[7] Council Directive 75/129 of February 17, 1975 on collective dismissals; Council Directive 77/187 of February 14, 1977 on safeguarding of employees' rights in the event of transfers of undertakings; Council Directive 89/391/EEC of 12 June 1989 on the safety and health of workers at work; Council Directive 94/45/EC on the establishment of European Works Councils; Council Directive No. 2002/14 establishing a framework for informing and consulting employees.

[8] For the example of the UK, see B. Kersley *et al., Inside the Workplace: First Findings from the 2004 Workplace Employment Relations Survey*, Department of Trade and Industry, 2005, pp. 35-36: "Most striking of all, perhaps, was the continued decline of collective labour organisation. Employees were less likely to be union members than they were in 1998; workplaces were less likely to recognise unions for bargaining over pay and conditions; and collective bargaining was less prevalent…".

2) Which measures could be taken to increase the security of workers while adapting to the more flexible needs at the labour market, for example minimum income, core labour law, etc.?[9]

9. Measures adopted at EU level must respect the competences of Member States in the field of labour law and the principle of subsidiarity. But there is a core labour law of the EU founded on *ordre communautaire social*: labour is not a commodity (like goods, capital), pursuing the objective of improved working conditions, respecting the fundamental rights of workers as human beings, acknowledging the central role of social dialogue and social partnership at EU and national levels, and adhering to the strict principle of equal treatment without regard to nationality.

10. Measures to increase the security of workers while adapting to the need for flexibility of both employers and workers may draw on both old and recent experience of the EU. The European Coal and Steel Community (ECSC) adopted a strategy of active labour market policy based *not* on stability of employment, but on the contrary, the *adaptation* of workers to economic change. The idea was that workers ought not to have to bear the consequences of economic change which technical progress makes inevitable. Enterprises which are being transformed can be given temporary assistance to avoid the need to lay off their employees. And if they close down, wholly or partly, assistance can be given directly to the workers, to enable them to search for work elsewhere, or to re-train for other jobs: "For stability of employment there was substituted a necessary *continuity* of employment, along with changes in work".[10] More recently, amendments introduced by the European Parliament to the proposed Services Directive,[11] aiming to prevent "social dumping", demonstrate that a legitimate and successful development of the internal market is conditional on taking into consideration the social consequences and implications of proposals.

11. Core labour law measures to increase security and flexibility include provision of training[12] and building on the concept of health and safety to include the social and psychological well-being of employees.[13] This would embrace measures to support the organisation of working time to achieve a better balance between work and family/private life,[14] and providing a minimum income looking to EU measures guaranteeing a minimum decent wage.[15] As stated by the European Court of Justice in Case C-84/4, a floor of rights should look not to the lowest common denominator, but specify minimum standards with a view to improvement of living and working conditions, as declared in Article 136 EC.

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[9] Cf. the Green Paper's Question 8.

[10] G. and A. Lyon-Caen, *Droit Social International et Européen*, 7ème ed., 1991, p. 153.

[11] Proposal for a Directive on Services in the Internal Market, COM (2004) 2/3 final, adopted 13 January 2004. Now Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L376/26 of 27.12.2006.

[12] See below, Question 10.

[13] As defined by the European Court of Justice in *United Kingdom v. Council*, Case C-84/4, [1996] ECR I-5755.

[14] See answer to Question 11. Contrast Question 11 in the Green Paper. The Commission's proposals on revision of the Working Time Directive, again in the Green Paper, link the organisation of working time with the objective of providing greater flexibility. This is in flat contradiction with the Directive's purpose of protecting the health, safety and well-being of workers. Any regression from this health and safety objective of working time organisation would be subject to legal challenge. It is the UK's general opt-out which needs to be tackled as a matter of priority.

[15] For a comparison of minimum wages across the EU Member States, including their relative value using Eurostat's special conversion rates to remove the effect of differences in price levels between the countries, see "Minimum wage update", *European Industrial Relations Review* No. 392, September 2006, pp. 31-32.

3**) Do you believe that the adaptation of labour law could contribute to achieving objectives such as flexibility and security whilst reducing segmentation?**

12. In one important respect, this question contrasts with the Green Paper's Question 2 (italics added): "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?"

13. It is not the adaptation of collective agreements, but their *promotion* which can contribute. The adaptation of labour law required is to promote collective agreements. The success of the Nordic model is built on this foundation. The adaptation of labour law to achieving labour market objectives requires a collective framework. Legislation can provide such a framework. But EU labour law has promoted flexibility through social dialogue, agreements between the social partners.[16]

14. The original "adaptability" pillar of the European Employment Strategy (EES) focused on the role of the social partners: to achieve flexibility and security through social dialogue. But the responsibilities of the social partners can only be achieved with considerably greater support, both economic and political, on the part of both Member States and the EU institutions. Economic support is necessary to equip the social partners with the capacity to undertake the tasks specified. Political support is required to encourage the social partners to co-operate in the achievement of the tasks, but also to secure that national administrations embrace the participation of the social partners at all stages of the EES process, from the formulation of Guidelines, to their implementation through National Action Plans (NAPs), through to the evaluation of the NAPs by the EU institutions.

15. The purpose of labour law is to restore a balance of power in the individual employment relationship. Segmentation is only a threat if an individualised, segmented workforce is not protected and regulated within a collective framework. The potential for collective regulation is evident in the framework agreements on part-time work and fixed-term work reached through the European social dialogue. Similarly, protection may be secured by national collective agreements.[17]

16. Adaptation of labour law should reinforce this collective framework by intervening to support trade union membership and organisation and collective bargaining. Modernisation of labour law to meet the challenges of the 21st century starts with collective dimension; not, as in the Green Paper, with individual employment law.

[16] For example, in the Working Time Directive, Council Directive 93/104/EC.

[17] For example, in the temporary work sector, in Germany, on 20 February 2003 a framework agreement was reached between trade unions grouped together by the central German trade union confederation, DGB, in a bargaining cartel and the employer's organisation in the temporary work sector, BZA. BZA (Bundesverband Zeitarbeit Personal-Dienstleistungen), the largest employers' organisation in the temporary work sector, with some 1.600 members. In 2002, an estimated 4,000 private sector temporary employment agencies were operating in Germany employing some 273,000 temporary workers. "Collective agreements in place in temporary work sector", *European Industrial Relations Review* No. 354, July 2003, at pp.22-24. In Spain a national agreement was concluded in March 2005 for the telemarketing sector employing some 40,000 workers of whom some 90% are temporary workers. "National accord provides security for telemarketing workers", *European Industrial Relations Review* No. 378, July 2005, at pp.27-29.

4) What rights, if any, should be guaranteed to *"economically dependent"* and agency workers in particular to enable them to produce "good work" and employers to provide "good and fair" working conditions and appropriate social protection?

17. The concept of 'economically dependent workers' refers to those workers who do not correspond to the traditional definition of 'employee'.[18] This is because they do not have an employment contract as dependent employees. However, they are economically dependent on a single employer for their source of income. These workers are 'mid-way' between self-employment and dependent employment, and have some characteristics of both. Despite their similarities to employees, such economically dependent workers do not generally benefit from the protections granted to employees both by law and collective bargaining. Such 'economically dependent employment' has been regulated by law in the EU Member States in a number of ways, including: (i) presumptions that these are employees and fall within the scope of employment protection legislation (France, Greece, Luxembourg); (ii) reversal of the burden of proving employee status (Belgium); (iii) listing criteria that enable identification of workers as either employees or self-employed (Austria, Belgium, Germany, Ireland); (iv) extending protection to specified categories, even though they are not presumed to be employees (Denmark, France, Germany, Greece, Italy); (v) creating a special and separate status for such categories of workers who fall outside the established binary division of employee and self-employed (Germany, Italy, the Netherlands, Portugal); (vi) extending basic protections to all workers, but specific protections for specific categories (Italy).

18. The implication of this experience is that *at least* the same rights required for *employees* should also be guaranteed to *"economically dependent"* and *agency worker*s. The legal characterisation of such workers should not deprive them of at least the protection available to employees.[19]

19. At least, because it may be necessary for EU law to intervene to provide special protection, for example, for agency workers.[20] A step in clarifying responsibilities of various parties with a triangular employment relationship was the 1991 Directive on health and safety of temporary agency workers.[21]

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[18] See the comparative study by the European Industrial Relations Observatory (EIRO) at the European Foundation for the Improvement of Living and Working Conditions. A short version of the EIRO Study was published in the *EIRO Observer: Comparative Supplement*, 13 June 2002; a fuller version, together with most of the national reports, is available on-line on the EIRO website: http://www.eiro.eurofound.eu.int.

[19] As stated in ILO Recommendation 198 concerning the Employment Relationship adopted by the Conference at its 95th session, Geneva, 15 June 2006, paragraph 9: "For the purposes of the national policy of protection for workers in an employment relationship, the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that have been agreed between the parties".

[20] See the Green Paper, Question 10.

[21] Council Directive 91/383 of 25 June 1991. Clarification of the employment status of temporary agency workers might benefit from greater energy being devoted to the Commission's proposal of a Directive on temporary agency workers. See K. Ahlberg, B. Bercusson, H. Kountouros, C. Vigneau, L. Zappalà, *Transnational Labour Regulation: A Case Study of Temporary Agency Work*, forthcoming 2007, Peter Lang, Brussels.

This precedent could be built upon. The responsibility of sub-contractors should be addressed in a number of contexts: public procurement, information and consultation where redundancies or re-structuring affect the employees of sub-contractors, etc.[22]

20. Finally, apart from these legal strategies, in a number of Member States, trade unions have been active in establishing organisations specifically targeted at 'economically dependent workers' (Denmark, Germany, Italy, the Netherlands, Spain, Sweden and the UK). EU labour law could intervene more actively to support collective organisation targeting such vulnerable workers, not least at EU sectoral level.[23]

5) Which active labour market policies, defined as policies to get the unemployed back into work, are working in the Member States?

21. Answers to this question can be found in the extensive literature on the operation of the European Employment Strategy and national labour market policies. In particular, the publications the European Employment Observatory (EEO).[24]

The *European Employment Observatory's Spring Review 2006* identifies a number of innovative labour market practices and policies in the Member States.

In **Hungary**, in order to address unemployment, the government made changes in unemployment job-search benefit. Under new legislation, the benefit is tied to the recipient's last salary and gradually decreases over a nine-month eligibility period; after six months, the benefit is reduced to 60% of the minimum wage for all recipients. To increase job-search efforts, individuals who find a job in the second period receive half of the unpaid benefit as a bonus.

In **Slovakia**, a financial contribution for employing a disadvantaged jobseeker has been introduced to target disadvantaged jobseekers, which include school leavers/graduates aged under 25, people over 50, long-term unemployed people, disabled people, single parents and people who have been granted asylum. The employer is granted a financial contribution to cover the costs of employing the jobseeker for a minimum period of 24 months, particularly in regions with high rates of unemployment.

In **Sweden**, measures have been introduced to facilitate the integration of immigrants into the Swedish labour market by improving educational and work opportunities. Initiatives include financial support for specialist agencies to encourage entrepreneurship among minority ethnic communities.

[22] See the Green Paper, Question 9.

[23] In October 2001 the sectoral organisations in the field of temporary agency work, Euro-FIET (now UNI-Europa) representing the workers, and CIETT, *Confederation Internationale des Entreprises de Travail Temporaire*, representing employers, signed a joint declaration on temporary agency workers in favour of European legislation. As stated in ILO Recommendation 198 concerning the Employment Relationship adopted by the Conference at its 95th session, Geneva, 15 June 2006, paragraph 18: "As part of the national policy, Members should promote the role of collective bargaining and social dialogue as a means, among others, of finding solutions to questions related to the scope of the employment relationship at the national level".

[24] For example, the EEO's Autumn Review 2006 which reports on national actions on "flexicurity", and its earlier Spring Review 2006 reviewing innovative labour market practices and policies across 29 European countries. These are available on http://www.eu-employment-observatory.net.

Estonia has introduced new employment initiatives for people with disabilities. Under the 2006 Labour Market Services and Benefits Act, disabled people can register as unemployed and participate in active labour market programmes, regardless of the extent of their loss of capacity to work. All disabled people will be entitled to a personalised job search plan. Measures include support to employers for adaptations to premises and equipment necessary for hiring a disabled person, support from public employment service employees to help disabled people at job interviews, special aids and equipment provided to disabled people or employers, for use in the workplace, free of charge for up to three years, support workers for disabled people who need additional help or guidance; support workers can be used for up to one year: full time support for the first month, reducing to two hours' daily support after the second month.

In **Denmark**, older workers continue to leave the labour market before reaching state retirement age. 'Senior policies' have been strengthened to assist with the retention of older workers. Measures include: funding of initiatives to support the integration of older workers in the labour market, free consultancy services to all employers concerning senior policies, 'senior' networks of unemployed older workers, websites and campaigns to promote active aging, and 'senior agreements' to discourage early retirement.

The **Netherlands** has introduced the Life Course Arrangement, enabling employees to vary the amount of time they spend on work, care, education and leisure. Additionally, individuals can make use of the Life Course Savings Scheme, which enables them to save part of their annual salary to finance a period of leave in later life.

In **Finland**, a new initiative called Change Security has been introduced to assist workers who have been made redundant or are facing redundancy. It provides laid-off workers, both permanent and fixed-term, with greater financial security during the transition stage between jobs, and fosters greater cooperation among employers, employees and the labour authorities. Change Security offers financial incentives to dismissed workers who agree to an employment programme to enhance their chances of finding new employment. Specifically, a dismissed jobseeker with at least three years of work experience with the same employer or different employers is given rights to full paid leave for job-search activity (the length of the paid leave depending on the duration of the employment relationship), an employment programme (an individual job-seeking plan), and a higher unemployment allowance.

6) To what extent might simplifications and or reductions in existing labour laws contribute to making it easier for employers to take on new employees?

23. What is required is not simplification or reduction of labour laws *per se*, but regulation assessed in terms of achieving its objectives. Reducing employment protection of “atypical employees” leads to lower labour market participation and hence reduces the pool of employees available for hiring to employers. Providing rights to training increases the pool of capable employees making it more attractive for employers to take on new employees. If the objective is to make it easier for employers to take on new employees, better regulation means more effective, not merely less or simpler labour laws.

24. Simplification and reduction may be achieved by eliminating the complexity attached to multiple labour law regimes attached to different types of workers (segmentation). Such diversity means employers are faced with choosing among different sets of labour and social costs, and, if they get it wrong, possible challenges by workers. A better solution might be a general legal framework applicable to all, or the vast majority of workers, or possibly, a sectoral approach. Again, the social partners may be best equipped to negotiate the legal framework appropriate to the needs of employers and workers.

7) Highlight the challenges associated with the establishment of a single European definition of 'employee'.[25]

25. National labour laws adopt a definition of "employee", on which there is considerable convergence.[26] It is at least arguable that a single European definition of "employee" could and should be established for the purposes of *EU labour law*. The principle of equal treatment is fundamental to the *acquis communautaire social* and implies a common definition ensuring that this common category of workers enjoys the protection of EU labour law regardless of the Member State in which they work.

26. Major problems can arise if it is left to the Member States to define the concept of the employment relationship delimiting the scope of application of EU labour law.[27] Major discrepancies appear in the application of EU labour law in Member States. Further, opportunities are available for Member States to avoid it through manipulative definitions of their domestic legal concepts.[28]

27. Clarity might be achieved in legal definitions of employment and self-employment if EU labour law were to propose a single European definition of "employee", at least as regards employment rights regulated by EU law.[29]

8) How can labour law be reformed to tackle undeclared work, encouraging employers and employees into the legitimate labour market? Are there examples in particular countries where reform is having an impact in this regard?

28. Undeclared work refers to forms of employment which evade the norms of employment regulations. The proliferations of such forms of employment and the consequences for workers in declared employment were highlighted by the Commission in an Explanatory Memorandum attached to a proposal for a Council Directive "on a form of proof of an employment relationship.[30]

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[25] See Green Paper, Question 7.

[26] For example, a Report of 1 December 2000 by the European Commission on implementation of the Working Time Directive (COM(2000) 787 final) stated that the great majority of Member States had applied their implementing legislation to "traditional" employees working under a contract of employment as defined by national legislation and practice.

[27] For example, as proposed in the draft Directive on temporary agency work. Commission of the European Communities, *Proposal for a Directive of the European Parliament and the Council on working conditions for temporary workers*, COM(2002) 149 final, Brussels, 20 March 2002; *Amended Proposal*, COM(2002) 701 final, Brussels, 28 November 2002.

[28] One incongruity already revealed concerns the Part-Time Work Directive (Council Directive 97/81/EC of 15 December 1997 concerning the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC, OJ L14/9 of 20.1.1998). In the UK , the relevant Regulations apply to all workers due to the impact of the EU definition of the scope of coverage of equality law (see the Part-time Worker (Prevention of Less Favourable Treatment) Regulations 2000, S.I. 2000, N. 1551, as amended). In contrast, the application in the UK of the Fixed-Term Work Directive (Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, OJ L175/43 of 10.7.1999) is limited to "employees", not the wider category of "workers". See the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, S.I. 2002. N0. 2034.

[29] As with equal pay in *Allonby v. Accrington & Rosendale College*, Case C-256/01, [2004] *Industrial Relations Law Reports* 224. The Report of EMPL on the application of Directive 96/71/EC on the posting of workers (2006/2038/INI; Final A6-0308/2006 of 28.9.2006; Rapporteur: Elisabeth Schroedter), included in its Motion for a European Parliament Resolution, paragraph 9: "calls on the Commission to initiate negotiations with the Member States as a matter of urgency, with the aim of establishing transparent and consistent criteria for determining the status of 'workers' and 'self-employed persons' with regard to employment law".

[30] COM(90) 563 final, Brussels, 8 January 1991, paragraphs 5-6.

The Commission looked to the experience in the Member States to find formal requirements which made it easier for employment contracts and relationships to be identified. In the united Kingdom and Ireland, employers were required to inform employees in writing of the main conditions of their employment contract.[31]

29. The result, Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship,[32] aimed to require proof of the existence of an employment relationship. The objective, however, was more to provide information to the worker than to compel employees to acknowledge undeclared work and employers to engage in the legitimate labour market. The enforcement of requirements to provide information, and the sanctions available, has proved to be inadequate.

30. The problem has been magnified by the increased mobility of workers with the accession of new Member States. Insofar as such mobility is channelled through employment agencies, regulation of such businesses may achieve some degree of successful control over undeclared work. The correlation between undeclared work and problems linked to minimum wages and health and safety indicates that experience of enforcing such labour standards through labour inspectors is a potential mechanism to tackle undeclared work. The Commission's recent legal action against the UK, upheld by the European Court, condemning the UK government's advice to employers that they need not ensure that employees take the rest breaks guaranteed by the Working Time Directive is one instance of Commission action to enforce Community labour law.[33] This needs to be expanded to compel employees to actively acknowledge undeclared work. Trade unions could be valuable partners in combating undeclared work

9) Identify key elements or policies that characterises the positive impact of Active Labour Market Policies.

31. See answer to Question 5.

10) How important is it for a successful Active Labour Market Policy to promote lifelong learning/vocational training, and if so, what policy tools are best suited to this end?

32. The Commission's Social Dialogue website includes a long list of social dialogue texts on the subject of training and lifelong learning.[34] In March 2002 the European social partners at intersectoral level (UNICE/UEAPME, CEEP and ETUC) adopted a framework of actions for the lifelong development of competences and qualifications, as a contribution to the implementation of the Lisbon strategy.

[31] Tables on page 6-7 of the Explanatory Memorandum.
[32] OJ L 288/32 of 18.10.91.
[33] *Commission of the European Communities v. United Kingdom*, Case C-484/04, decided 7 September 2006.
[34] Many in specific sectors: seafarers, mines, electricity, agriculture, railways, hairdressers, banking, insurance, maritime fishing, sugar, chemicals, and the hotel, restaurant and café sector.

33. The role of the social partners in lifelong learning was acknowledged by the Kok Report of November 2004.[35] Particularly significant is a report by a group of eminent social scientists and senior civil servants, which concluded:[36] (bold italics added)

> "Empirically, a distinction between large enterprises and small and medium sized enterprises can be observed, with the latter clearly providing comparatively less training opportunities. However, it can also be observed that ***social partnership does play an important role, as the small and medium sized enterprises which are covered by agreements tend to do much better and agreements at national level may implement lifelong learning*** (as the recent national agreement in France)".

34. The report considers how to foster the demand for lifelong learning, and concludes that: (p. 48) (bold italics added)

> "the increase of demand for lifelong learning depends on many conditions such as:… ***collective bargaining and individual labour contracts should incorporate more explicit rights and duties concerning lifelong learning in order to promote competitiveness and employability***".

The High Level Group's policy recommendation was categorical: (p. 49) (bold italics added)

> "The national strategies for lifelong learning should, at the level of working conditions:… include ***access to training activities as a standard ingredient of the employment contract and collective agreements***".[37]

11) What measures are needed to promote a life-cycle approach to work?

35. A 1998 study of working time trends in the Member States of the EU over the previous twenty years emphasised the increasing importance of part-time work, interpreted as a concomitant of increasing female labour market participation.[38] The study revealed the diminishing role of general collectively agreed working time reductions while emphasising the key role played nonetheless by collective bargaining policy for working time reductions and providing a series of examples of the scope which the state has to demand and promote working time reductions.

[35] One of its "key recommendations" was: (p. 33) "Member States in close cooperation with social partners should adopt national strategies for lifelong learning by 2005, in order to address the rapid technological change, to raise labour market participation, to reduce unemployment and to enable people to work longer".
[36] *Report of the High level Group on the future of social policy in an enlarged European Union*, European Commission, Directorate-General for Employment and Social Affairs, May 2004, section 3.1.2, pp. 47-48.
[37] In this connection, it may be noted that the Charter of Fundamental Rights of the European Union, proclaimed at Nice in December 2000, includes Article 14(1): "Everyone has the right to education and to have access to vocational and continuing training".
[38] S. Lehndorff, "From 'collective' to 'individual' reductions in working time? Trends and experience with working time in the European Union", *Transfer :European Review of Labour and Research* No. 4/98, Winter 1998, pp. 598-620.

The study concludes by proposing coordinated action in three areas of policy:

> "firstly to encourage expansion of the system of institutions, with the aim of achieving equal status for women's work as a method of making an independent living; secondly, to make individual working time reductions easier so as to create a degree of individual choice during a person's working life (in contrast to a policy which for example, effectively allocates part-time working to women as a group); and thirdly, a return to collectively negotiated working time reductions".

36. The gender context of working life is central and implies a life-cycle approach to work.[39] However, it must be tackled through collective, not individual mechanisms.

[39] See Jean-Yves Boulin and Reiner Hoffmann, "The conceptualisation of working time over the whole life cycle", in Boulin and Hoffmann (eds), *New Paths in Working Time Policy*, 1999, European Trade Union Institute, Brussels , pp. 11-48.