



Amicus submission to the House of Lords Select Committee on the European Union - Sub-Committee G (Social Policy & Consumer Affairs)

EU Commission Green paper “Modernising labour law to meet the challenges of the 21st Century”

Introduction

1. **Amicus is the UK’s second largest trade union with 1.2 million members across the private and public sectors. Our members work in a range of industries including manufacturing, financial services, print, media, construction and not for profit sectors, local government, education and the health service. It has recently agreed to a merger with the Transport and General Workers Union which will create a new union of over 2 million members.**
2. Amicus believes that the best way to modernise EU labour law to meet the challenges of the 21st century (both in terms of globalisation and advances in technology) is to encourage and strengthen collective bargaining, without diminishing job security or contractual rights.
3. Amicus rejects the assumptions underlying much of the green paper, and the implied meaning of ‘flexicurity’, that either the economy, or vulnerable workers such as women and migrant workers, would benefit from weakened laws on unfair dismissal and contractual rights.

The specific questions posed in the Committee’s Call for Evidence are addressed below.

4. Flexibility of the labour market
 - 4.1. It is necessary to define what is meant by flexibility in the labour market. Numeric flexibility is more than adequately provided for within UK employment legislation and indeed Amicus would argue that this works against the long term interests of British industry in favour of the short term gains of investors.
 - 4.2. Amicus is concerned generally that ‘flexible’ legislation might contribute to a situation that allows workers to be exploited. UK legislation, which supposedly protects employees’ rights, actually contains many exceptions. This is vividly illustrated in an extract from

Professor Keith Ewing's presentation to the Industrial Law Society in 2000:

"Take a young man in his mid 20s, employed as a security guard. Despite the great reforms since 1997, it remains the case that he may be hired on a lower minimum wage; he may be required to agree to work long hours, certainly more than the prescribed international and EU maximum of 48 hours weekly; he may have no right to have his trade union recognised for collective bargaining if he has 19 rather than 20 colleagues; he will have no right to be represented by a trade union in the negotiation of his terms and conditions of employment; and he will have no right to be treated fairly by his employer for the first year of his employment"¹.

4.3. On the other hand functional flexibility is dependent upon the adequate provision of skills to equip workers to meet the challenges that industry and commerce faces in a globalised economy. In this area the UK has much still to do as has been identified by the recent Leitch report².

4.4. Amicus does not believe that changes to labour law is capable of achieving functional flexibility but that the enhancement of the role of trade unions can advance flexibility, without detracting from security and fundamental human rights.

4.5. Training and innovation are key to the UK's competitive advantage in the world economy, and both are best served by secure work places where the workers have a voice to contribute ideas and both employer and employee have the incentive to invest in training. Unions have a key role to play in promoting education and training. Our workplace representatives can help employers invest in education and training. We also directly provide much training, both through the Union Learning Fund projects, and other initiatives and bodies.

5. Employment Security

5.1. It is easier to hire and fire UK workers than in almost any other Western European country. Amongst OECD Nations the World Bank places the UK as the 4th easiest in which to do business and the 6th easiest to hire and fire workers. Within Europe only in Denmark is it easier to hire and fire workers and that has to be viewed alongside its advanced social provision for workers displaced identified as a model for flexicurity in the EUC Green Paper.

5.2. Amicus would argue strongly that workers respond better to change and flexibility where there is confidence and trust in their own security

¹ KD Ewing, Employment Rights: Building on Fairness at Work, speech to Industrial Law Society (2000).

² Prosperity for all in the global economy - world class skills Final Report December 2006

of employment. This view is supported by research undertaken by, amongst others, The Work Foundation³.

5.3. Amicus has consistently argued that strengthening the laws on redundancy consultation and protection would enhance the security of employment of UK workers and create a level playing field for workers in companies operating across Europe.

6. The Concept of “Flexicurity”

6.1. Amicus is concerned about a number of flawed presumptions in the Green Paper and rejects the propositions that:

- reduced labour security improves productivity
- women and disadvantaged job-seekers necessarily benefit from flexible forms of employment
- new laws and better security must involve “red tape” harmful to legitimate business
- the labour law framework in the UK is conducive to growth and full employment.

6.2. The UK record on productivity over the last 10 years whilst showing some improvement has not reached the levels of other EU States where employment protection legislation is significantly stronger.

6.3. In the UK, where we have some of the most flexible employment practices in Europe, evidence points to the most vulnerable workers continuing to find themselves in the temporary labour market with less favourable protection than those employed in the permanent labour market and frequently on lesser conditions⁴.

6.4. Equivalent growth and full employment have been achieved in differing labour market models⁵. Research by Andrew Glyn & John Edmonds (among others) supports this. They wrote: “Taking these increases together it is clear that Mr Brown’s public expenditure programme has been directly responsible for all the growth in UK employment since 2000”⁶.

6.5. We do support the contention that certain forms of flexible *working* (quite different from *flexicurity*) can assist workers, especially those with caring responsibilities or certain disabilities. However, workers need secure employment and contractual terms and effective trade union representation, in order to negotiate flexible working that helps them. Flexibility of hours at the discretion of the employer, e.g.

³ An agenda for work: The Work Foundation’s challenge to policy makers Provocation Series Volume 1 Number 2 David Coats, Associate Director - Research, The Work Foundation

⁴ Quarterly Labour Force survey, September- November 2005 - from PSI Report “The Hidden One-in-Five” September 2006

⁵ OECD Employment Outlook 2006 - Boosting Jobs and Income

⁶ Andrew Glynn and John Edmonds, as reported in Financial Times 30 June 2005 <http://www.ft.com/cms/s/4d573266-e903-11d9-87ea-00000e2511c8.html>

annualised hours contracts requiring long hours in periods of peak demand, effectively exclude most workers with caring responsibilities.

7. Other labour market challenges

7.1. Within the UK there are groups of workers who face challenges and are regarded as vulnerable. Amicus agrees with the government that legislative changes need to be made to protect the vulnerable workers in our society. Amicus has welcomed the steps taken for example to offer some protection to migrant workers through the Gangmasters legislation. However, Amicus is disappointed that government has obstructed the introduction of the EU Temporary Agency Workers Directive and has recently obstructed the passage of the private members bill⁷ designed to provide some protection to agency workers in the UK.

7.2. There is a clear need for clarity in Member States' legal definitions of employment and self-employment, as there is a need for a convergent definition of "worker". The EU should, of course, work to combat undeclared work.

7.3. There is a significant and growing problem here, which highlights general failings of the legal employment relationship. The particular solution would be to provide for joint and several liability in relation to "three-way relationships" including sub-contracting and agency work.

7.4. In the UK in particular the problem is such that workers may never be sure, even after obtaining legal advice from an expert in the field, whether they are employed by an agency, a sub-contractor, or by the end user of their services, or none of them. In *Johnson v Montgomery Underwood* in 2001⁸ the Court of Appeal asked Parliament to intervene.

8. Groups covered by labour law

8.1. The complications over this issue in the UK include those in relation to ministers of religion. In the UK the House of Lords⁹ and the Employment Appeals Tribunal¹⁰ are clearly saying that the legal framework must be reviewed and changed.

9. Role of EU Regulation

9.1. The citizens and states in the EU should seek nothing less than positive sound universal rights which accord with giving effect to existing international and European standards. This is not the same as a "floor of rights", that provides low basic levels below which people

⁷ **Temporary and Agency Workers (Prevention of Less Favourable Treatment) Bill**

⁸ *Johnson v Montgomery Underwood* [2001] IRLR 269

⁹ *Church of Scotland v. Rev. Helen Percy*, [2005] UKHL 73

¹⁰ *New Testament Church of God v. Rev. Sylvester Stewart*, [2006] UKEAT/0293/06/DA

should not drop and which may be used by the unscrupulous to create a ceiling.

9.2. Sound universal standards are the only means to avoid a drive for deteriorating rights and “the race to the bottom”. They are not the same as a “floor of rights”. The EU has a duty to emphasise, encourage or enforce compliance throughout Europe and also the rest of the world.

9.3. Consistent and clear rights will take care of the problems of workers operating in a transnational context, throughout the Community and beyond its borders. To that end Amicus views the need for a common definition of worker as secondary to the establishment of sound universal workplace standards.

10. Conclusion

10.1. In 2002, the Managing Director for Human Development at the World Bank, Zafiris Tzannatos, produced "Unions and Collective Bargaining - Economic Effects in a Global Environment"¹¹. This was an in depth report that reviewed more than a thousand studies on the effects of unions and collective bargaining. It found that **co-ordinated collective bargaining tended to be associated with lower and less persistent unemployment, lower earnings inequality, and fewer and shorter strikes.**

10.2. Amicus would assert that the promotion and development of collective bargaining is core to the success of meeting the challenges of the 21st Century.

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¹¹ Co-written with Toke Aidt of Cambridge University - ISBN 0-8213-5080-3 - http://www-wds.worldbank.org/external/default/main?pagePK=64193027&piPK=64187937&theSitePK=523679&menuPK=64187510&searchMenuPK=64187283&theSitePK=523679&entityID=000094946_02083104140023&searchMenuPK=64187283&theSitePK=523679