Subject: Italian position on the Green Book of the European Commission on Modernising Labour Law.

PREMISE

The present document represents the answer of the Italian Government to the European Commission’s Green Book on modernising Labour Law. It has been prepared taking into account the consultations carried by the Ministry of Labour with the Social Partners. (*)

GENERAL REMARKS

1. The Green Book has the merit of proposing a discussion over Labour Law in Europe, although in its development and contents it appears mostly devoted to exploring if and how any possible modification of the existing legislation can contribute to the promotion of “flexicurity” in employment relations.
However, even if it addresses such a limited objective, assessments on the Green Book cannot leave aside an explicit reference – which instead is absent from the text – to the Charter of Fundamental Rights of Nice that already constitutes, even before its hopeful “constitutionalisation”, a protection and a political and legal obligation for social rights as well, as proved by the 2001 Commission Decision assuming the Charter as the basis for its action and by significant European and national case law. Any further modification of Labour Law aiming at preserving its reasons and original functions, which are still valid, could only occur within the perimeter of principles and rights enshrined in the Charter.

2. The core issue of the Green Book concerns the paths and the tools for providing companies with as much flexibility as they need in the new international context, while at the same time guaranteeing security to employees. After observing that such objective has been pursued in recent years by “flexibility at the margins” that has widened the contractual forms and segmented the labour market, the Green Book assumes that a more adequate solution could be represented by loosening ties to the regulation of standard working relations, including dismissal conditions, along with strengthening the protections on the labour market in order to foster mobility and employability of workers and increase employment rates.

Besides the lack of empirical evidence of an undisputable link between less employment protection regulation and an increasing propensity of companies to hire, such hypothesis shapes a trade-off between protection on the job and protection on
the labour market, while both are needed to provide stability of jobs and create good quality of work.

Mixing these equally useful elements for a “good flexibility” can only be the result of collective bargaining, whose importance must be further stressed, supported by public policies aimed at improving labour market protections.

3. The Green Book correctly notices that the proliferation of contractual forms has had an ambivalent outcome, and this is also the case of Italy. While sometimes these forms have favoured integration in the labour market and employment, in other cases they have started unstable and precarious jobs namely for women and young people. To prevent flexibility to change into precarious employment conditions, it is necessary to make no standard jobs sustainable both through adequate legislative and contractual arrangements as well as developing protections in the labour market along with incentives aimed at turning them into permanent jobs. The latter Italian legislation moves toward this direction by making permanent working relations favourable for business.

4. The Green Book addresses mainly to the Member States: that sounds logical in the light of their primary competence to regulate working relations; nevertheless, it correctly calls for action of the European Union as such. Differently from the past, this action, according to the Green Book, is intended in the future to avail basically itself of the open method of coordination. While this has proved effective in some fields like the European Employment Strategy, it cannot become the only tool of the European governance. Social harmonisation of the internal market, to become
effective, requires that the Commission does not give up to its qualified legislative initiative, where needed: this is also stated in the Declaration “Enhancing Social Europe”, signed by Labour Ministers of ten Member States, including Italy, which refers to the development, on the basis of the *acquis communautaire*, of the European Labour Law including a set of minimum social standards applicable throughout the European Union. As a matter of fact, reviving the Commission’s initiative paves the way to stimulate and support the European social dialogue that may produce framework agreements between the European Social Partners.

**ANSWERS TO THE QUESTIONS**

**A flexible and inclusive labour market**

1. In this phase it should be considered as crucial the extension of rights and social protections to no standard workers, on one hand, and the setting of effective social protection mechanisms, active labour market policies and vocational training, on the other hand, aimed at the reinsertion into stable jobs.

2. Labour market segmentation can be reduced through a better balance between flexibility and security in order to make the former more sustainable, *via* effective protections of jobs and in the labour market. To this end, the role of Social Partners is crucial.
3. The existing legislative and contractual regulation, having already embodied relevant aspects of flexibility, does not represent an obstacle to changes related to the new international environment.

4. The permanent contract is the common form of jobs. It must be preserved accordingly, as recognised by the European Social Partners. In this framework the Italian Government promotes employment stabilisation and permanent contracts.

Modernising Labour Law

5. Employment Transitions
   Action is needed to facilitate employment transitions of all workers by creating a network of protections in the labour market that combines income support, active labour market policies and life-long learning, also by making social partners responsible as far as allocation of resources is concerned.

6. Training plays a crucial role throughout the working life cycle. It shall be recognised as an individual right, to be claimed either by legislative or contractual arrangements. Investing in human resources is a competitiveness factor for business and an opportunity of professional and personal growth for workers. Therefore bilateral initiatives aimed at making social partners responsible for the promotion of vocational training may well be supported.

Uncertainty with regard to the law

7. Any initiative aimed at detecting false autonomous work is welcome. The concept of “economically dependent work” is certainly interesting. However, having regard to the diversity and complexity of national situations in this field, it seems difficult to come to an univocal definition of this kind of work at European level.
8. Bearing in mind the Charter of Nice, the answer can only be positive. The “core rights” extended to all workers, regardless to their contracts, must consider both working conditions and protection on the labour market. Their recognition ensures the quality of work and makes employment transitions easier and more sustainable.

**Three Way Relationship**

9. The answer is yes. The Italian law already contains provisions on the responsibility of both the contractor and the sub-contractor.

10. Again the answer is yes. The Italian legislation provides for equal treatment, no discrimination among those workers and the agency’s and the utilising company’s joint responsibility. Anyhow, the Commission is invited to draft a Directive proposal on agency temporary work with the scope of creating a harmonized framework at European level.

**Organisation of Working Time**

11. The most recent proposals for amending the working time Directive embody enough elements of flexibility. However, the opting-out clause shall be eliminated although within a defined period of time whereas the primary importance of collective bargaining for working time arrangements is to be confirmed.

**Mobility of workers**

12. By principle, a common definition of “worker” at European level is desirable to assure the homogeneous implementation of European law, namely looking at a deeper integration of labour markets. Notwithstanding this, such definition needs to be clarified in all its implications, taking into account the diversity of national legal systems, as far as fiscal and social security aspects are also concerned.
As an immediate goal, it is necessary to ensure that the various definitions of “worker” in the European Directives are coherent.

**Enforcement issues and undeclared work**

13. In this case also the answer is yes. The Commission should propose measures enhancing cooperation among Member States’ competent Authorities in order to monitor more effectively the respect of European labour provisions, especially for posting of workers and the entry into force of the Services Directive. Social Partners should be encouraged to give their contribution in this direction.

14. Fighting undeclared work must be considered one of the prior commitments of the European Union, both by supporting Member States policies to stem irregular work and favouring its emersion as well as by managing cross-border movements of workers. This issue has a supra-national dimension the EU should make itself responsible for, thus integrating Member States’ activities.

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*The following organisations have been consulted:*

CGIL CISL UIL UGL Confindustria Confcommercio Confapi Confartigianato CNA Confetra Confcooperative Lega Cooperative UNCI Confedir CIDA Unionquadri-CIU