Green Paper: “Modernising labour law to meet the challenges of the 21st century”
UNI-Europa’s response

General comments

On 22 November 2006, the European Commission presented a Green Paper ‘to launch a debate in the EU on how labour law can evolve to support the Lisbon strategy’s objective of achieving sustainable growth with more and better jobs.’ This launched a public debate on the future of labour law in Europe and a web-based consultation.

UNI-Europa reminds the Commission that the social partners have a specific right to consultation on issues of social policy under the Treaty (article 38). The issues addressed in the Green Paper focus on the core competences of national and European social partners and, therefore, the opinion of social partners should have been given priority in the consultation process. Moreover, the Commission’s decision to ask 14 leading and limited questions in an extremely short period of ‘open public consultation’ on such complex issues cannot be accepted.

Secondly, UNI-Europa is deeply concerned by the ideological bias of the Green Paper and the quality of the analysis accompanying some of the questions posed. According to the Commission, ‘the modernization of labour law constitutes a key element for the success of the adaptability of workers and enterprises’. The assumption made in the Green Paper that a reduction in employment protection legislation and the introduction of different ‘flexible’ contractual arrangements and working conditions is necessary to attain economic and employment growth is deeply flawed. Although the Green Paper is couched in the Commission’s revised Lisbon strategy, UNI-Europa finds no links to the objectives of quality jobs, investment, innovation, research and sustainable development.

UNI-Europa deplores that the Commission pays no attention to the reduction of social precariousness, the fight against social fraud, the reconciliation of working and private lives, the financing of social protection and the fight against social exclusion.

Finally, UNI-Europa is concerned that the Green Paper only considers individual labour law without considering the importance of the role of, and increasing need for, collective rights and collective bargaining in national and European social models. The tendency towards the individualisation of labour law is wholly rejected by UNI-Europa as it is a means of undermining social Europe, collective determination of terms and conditions and the defence of vulnerable workers.

Rather than weakening labour protection rules and legislation, we call on the Commission to prioritise the following areas:

- The extension of labour law and the strengthening of worker protection for all workers, particularly atypical, temporary agency, economically dependent and freelance workers;
- The recognition of core labour rights for all workers regardless of contract, including the right to organise, negotiate collective agreements and the right to strike;
- The creation of individual rights to training and life-long learning for all workers regardless of their type of contract.
Responses to the Commission’s questions

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

The objective of labour law is to ensure workers protection from exploitation, and to redress the imbalance of power between employers and workers. Any labour law reform agenda must pursue these goals.

The green paper comes from the perspective that ‘flexicurity’ would be achieved through reform of individual labour law. UNI-Europa does not share this view, but rather stresses the importance of collective forms of labour law and social protection in promoting the creation of decent work and determining fair terms and conditions.

- Labour law reform: at which level?

UNI-Europa firmly believes that while the European Union is legally committed to improving the living and working conditions of workers, through the Treaty, the reform of labour law should remain primarily a national and social partner competence.

However, UNI-Europa contends that the development of a core of European labour standards is urgently needed to uphold the social dimension of the internal market. The EU has a responsibility to elaborate provisions to ensure equality and avoid discrimination between member states.

Existing European legislation should be better implemented and enforced to ensure social security and labour law protection for all workers (especially those with atypical contracts), especially the posting of workers directive and health and safety rules (which should also be modernised to cover new risks).

Existing European laws on gender equality have not yet achieved their aims. The gender pay gap and the lack of provisions for the reconciliation of work and family life and public childcare services remain key concerns for UNI-Europa.

EU regulation should never present an obstacle to any member state(s) wishing to ensure better standards for workers.

- Labour law reform: for what purpose?

Nevertheless, we believe that the Commission has a role to play in the development and improvement of labour law.

Collective worker rights to organise, negotiate terms and conditions and the right to strike (including the transnational right to strike) are basic human rights and should be recognised and promoted as such by the European Commission and member states.

UNI-Europa believes that the top priority should be to give atypical workers the security they need in their working life and not to reduce employment protection for all workers.

Worker and social protection within existing labour legislation should be extended to reflect changing career paths and employment relationships.

We contend that by increasing, rather than decreasing, security in employment, greater flexibility will be possible.
It is now imperative that the Commission, MEPs and member states demonstrate their political will to resolve the excessive insecurity experienced by many temporary, freelance and economically dependent workers. This should be the top priority of a meaningful labour law reform agenda.

UNI-Europa recommends that the European Commission prioritise the following areas:

- The draft directive on temporary work should be adopted without further delay ensuring equal treatment and improved working conditions.
- A broad European definition of ‘worker’ should be used in European legislation and in cases of transnational conflict referred to the ECJ, alongside this efforts should be made for upward convergence in national definitions of ‘worker’. Where they do not currently apply, national definitions of ‘worker’ should be extended to cover all people working for someone else extending labour law coverage to atypical workers, including temporary, casual, freelance and tele- workers.
- As a consequence, all workers, even those who are the least economically dependent, would be subject to national industrial relations law and collective agreements. Workers’ representation bodies, at sub-national, national and European levels, should be allowed to legitimately represent these independent workers’ interests.
- There should be a legal presumption of employment. In the case of dispute, the burden of proof should be on the employer to prove that an individual is not a worker.
- Guaranteed rights to training should be provided throughout Europe.
- Better enforcement of existing European social and employment legislation, as well as European-level social dialogue agreements. The latter may involve the development of European monitoring and controlling systems responsible for clarifying the legal character of European agreements and establishing a framework for negotiations and enforcement procedures for these agreements.
2. Can 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?

UNI-Europa is concerned about labour segmentation and is convinced that labour law and collective agreements have a central role to play.

The current level of worker flexibility, and the pressure towards an even greater level, is one of the main factors behind increased labour market segmentation and increasing social malaise.

Indeed, in practice, the demand for more flexibility often aims at reducing the costs of labour and increasing the productivity of labour simultaneously, which is unsustainable. The growth in the use of atypical contractual arrangements – considered to be more flexible – is directly linked to the search for cheaper employment options.

Alongside the European employment situation and the current high levels of unemployment, this trend to systematically use atypical contracts, rather than the occasional use that they were designed for, is the source of increased labour market segmentation and should be tackled head-on.

▪ More security not ever-more flexibility is needed: creating a toolkit of measures

A high degree of flexibility is already available, through national industrial relations and employment law in the member states. The over-flexible workforce has to be made more secure.

Through the outsourcing of tasks to companies using contract or temporary staff, we are witnessing the growth of ‘two-tier workforces’, where workers in similar jobs are paid and treated substantially differently. Pay insecurity often accompanies occupational uncertainty, making family planning and other life choices increasingly difficult to make.

In many of UNI-Europa’s sectors, it is not more flexibility but more security for all which is urgently needed. A lack of employment protection legislation rather than an excess of rules in many cases has distorted the EU labour market and has made “opportunities to enter, remain and make progress in the labour market vary considerably between member states” (Green Paper, pp.9).

For UNI-Europa, providing more security and worker-flexibility would be achieved through ensuring more employment creation, the quality of employment and income security for all workers.

The solution is not to make the standard contract more flexible. Making the existing standard employment contracts more flexible would not decrease labour segmentation. It would simply increase the number of workers not properly covered and protected. Standard contracts should remain the norm in Europe’s labour market.

UNI-Europa wholeheartedly agrees that “potentially vulnerable workers need to have a ladder of opportunity so as to enable them to improve their mobility and achieve successful labour market transitions” (Green Paper, pp.8), b

Improving the employment opportunities of disadvantaged and vulnerable groups requires a broad tool-kit of policies, from active labour market policies to training and anti-discrimination policies.

Moreover, UNI-Europa is concerned by the gender segregation in services sector employment, and, consequently, calls for a strengthening of rights for parental leave and childcare provisions at both national and European level for both men and women.
Negotiated solutions: finding win-win results

Negotiated solutions exist to reduce and/or avoid labour market segmentation and to improve flexibility when and where it is necessary.

Negotiated solutions to reduce and avoid labour market segmentation have been achieved in a number of countries through sectoral and company-based agreements within the current framework of national and European labour law.

The Spanish inter-professional agreement with the government on the transition between fixed-term contracts and permanent contracts of June 2006 is an excellent example of a national response to the national context, to ensure that the imbalance between flexibility and security is re-equilibrated. Importantly, the rationale behind the Spanish law was to improve the competitiveness of Spanish companies and the economy as a whole, in recognition of the damaging effect of labour market segmentation on national economic performance.

The Swedish collective agreement for temporary workers, negotiated by our Swedish affiliate HTF, is another good example, which extends employment protection to temporary workers and ensures that all temporary workers are treated at least equally to their counterparts in the user enterprise. Thus, companies have the flexibility to use agency staff to cater for the production cycle, but those workers are guaranteed employment security and compensation.

Good practices of negotiated flexibility with employment security should be better publicised and promoted by the European institutions to allow transnational learning and review, and to rebalance the public debate.

Flexicurity has serious financial implications

Flexicurity cannot be discussed without taking into account the financial implications of employment security. Income security and a high-level of social protection are preconditions to successful negotiations on flexicurity. Negotiated solutions can only exist if there is a strong and reliable system to secure income and social protection. This is the overwhelming conclusion of any serious examination of the existing successful systems of flexicurity, and has implications in terms of macroeconomic policy and public spending constraints.
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?

The objective of labour law is to ensure workers protection from exploitation, and to redress the imbalance of power between employers and workers. Any labour law reform agenda must pursue these goals.

- **Collective agreements and regulations are not, as such, barriers to productivity and competitiveness**

European workers are amongst the most productive in the world, per hour worked, and Europe remains highly competitive in world markets, both in goods and services. European social rights and labour market systems are the foundations of this high rate of productivity. Workers’ rights are crucial for both economic efficiency and social justice, creating a balance in the workplace and society in general.

Improving the legal guarantees for workers must go hand-in-hand, and is a prerequisite, for improving the economic performance of companies and the country as a whole.

The situation in Spain is demonstrative. The excessive use of fixed-term contracts in Spain, which has been higher than any other EU member state in recent years, has been directly linked with poor productivity and a lower level of international competitiveness than other EU countries. Through the 2006 collective agreement, the social partners and government have committed themselves to improving productivity in a socially sustainable manner.

Collective agreements have a strong role to play in stimulating productivity growth. UNI-Europa insists that collective bargaining should first take place at interprofessional or sectoral level to ensure the greatest level of solidarity between workers possible. Systems of coordinated decentralisation of collective bargaining, as developed in a number of member states (e.g. Denmark), allow for company flexibility within a fair framework.

UNI-Europa does not accept that labour market deregulation is the necessary means to promote small and medium enterprises (SMEs). Public enterprise policies and fiscal measures are a better means of supporting the development of SMEs.

Where improvements need to be made in legislation or regulation, because there is a clearly defined problem, these should be negotiated in the framework of constructive social dialogue. Both the needs of companies and the legitimate demands from workers for security should be taken into account.
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?

From the Commission’s question it is unclear if we are being asked how to facilitate fixed-term or temporary agency contracts. Therefore, we have answered each case separately. We demand that future consultations and Commission documents are unambiguous in the terms used.

Regardless of the contract offered, job candidates should be offered non-discriminatory, secure and stable terms and conditions in the recruitment process.

- No need to encourage more fixed term contracts through reform

UNI-Europa believes that the regulation of fixed-term contracts is well developed and there is no need to encourage the greater use of fixed-term contracts.

We welcome collective agreements which promote the transition from fixed-term to permanent contracts for workers (e.g. 2006 Spanish interprofessional agreement or Italian telecommunications collective agreement 2005-8).

- Temporary agency workers need more security

As far as encouraging recruitment under temporary agency contracts is concerned, this will be dependent on increasing the quality of agency work.

A recent UK Department of Trade and Industry (DTI) report found that “improved working conditions would increase the attractiveness of agency work, thereby increasing the pool of people willing to undertake this sort of employment” (source: CWU).

A wider pool of talent would allow agencies room to offer specific responses to the needs of client companies. The primary means of ensuring better working conditions for temporary workers is to ensure that they are guaranteed at least equal treatment to their counterparts in the user enterprise, employment security with the agency, portable pension schemes and training opportunities.
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?

UNI-Europa reminds the Commission that ‘full employment’ remains one of the objectives of the Treaty of the European Union. This term is rarely mentioned in the debate surrounding the re-launched Lisbon strategy and the promotion of the ‘flexicurity’ model. The current debate in Europe on ‘flexicurity’ is too narrow.

- **Reducing employment protection produces insecurity not employment**

The Commission and member states increasingly argue that employment protection legislation should be rolled-back, and that policy should instead focus on investment in training, and assisting retrenched workers to find new jobs. The current public discussion about the benefits of labour market deregulation has little to do with full employment and everything to do with companies’ demands for ever-more flexibility.

UNI-Europa warns the Commission that promoting the deregulation of national employment protection legislation, without ensuring that adequate spending is available for, and committed to, a high level of social protection and active labour market policies, would produce far greater insecurity amongst workers. In the context of current fears about globalisation, the political consequences of greater insecurity should not be ignored.

For marginalised labour market groups, the effect would be more devastating, undermining their position further rather than not improving their career prospects.

For example, in Slovakia, the increasing numbers of self-employed workers (without employees) has been causally related to the changes in the Labour Code in 2003, when the protection of employees against dismissals was curtailed (source: EIROnline). Economically dependent self-employed workers make up a fifth of the Slovak commerce sector workforce, and these workers are not protected by rules on occupational health and safety or working time. Their employers are not obliged to provide for the workers’ further education or paid leave, which accounts for approximately one twelfth of the working time of a full-time employee.

Reducing employment protection in the context of high unemployment does not improve the position of unemployed workers over the long term. UNI-Europa stresses the importance of macroeconomic policies based on growth.

- **The Nordic model: a good mix of macroeconomic policies and strong collective bargaining**

The public debate about the Danish flexicurity model, in particular, has systematically referred to it as model based on the cheap hiring and firing. This is highly misleading.

The Danish model is the result of over a hundred years of economic and social development based on strong collective bargaining and solidarity between workers. Currently, the Danish macroeconomic situation is responsible for the high rate of employment, supported and nurtured as it is by the social structures. This model of flexicurity cannot be easily copied or exported to other member states as a number of factors have determined its success in recent years, not less a very high level of union density.
In the Nordic tradition of collective bargaining, social partners fill the large vacuum that statutory labour law leaves.

Danish labour law does not force employers to obtain prior administrative permission before firing workers or to award high amounts of severance pay. As a consequence, overall job protection for standard workers, according to OECD criteria, is more or less half the level of German, French or Spanish job protection.

Trade unions negotiate job protection for workers through collective agreements covering the different sectors of the economy, which are effectively universally applicable because of the high rate of union density.

While some job protection requirements such as administrative processes and severance pay are indeed less strict than in other countries, Danish workers enjoy notification periods that are actually higher than in many other parts of continental Europe.

Crucially, in the Nordic system, comprehensive social protection and labour market policies are geared towards labour market participation. By investing about 3% of GDP in ‘passive’ policies and about 1.5% of GDP in ‘active’ labour market policies (the highest in the EU), the Danes prepare workers for future employment and protect unemployed workers in their period between jobs. High replacement rates in unemployment benefits reduce the economic uncertainty created by periods of unemployment.

In Sweden, collective agreements at sectoral level have set up ‘career transition’ funds financed from the business sector and jointly managed by social partners. These funds provide notified workers with training, assistance in searching for work, or paid internships in other firms, even while the company that is firing them still formally employs them.

- Anticipating structural change must become standard practice in all companies

UNI-Europa stresses that anticipation of structural change should become a standard practice in companies, by which firms invest in timely information and consultation, innovation, training and the internal mobility of the workforce.

Statutory rights to vocational training must be improved to ensure that all workers, especially female, younger and older workers, are given a fair chance to adapt to the introduction of new technologies and structural change.
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?

The development and maintenance of skills is a core priority for service sector unions and workers.

The proclaimed objective of individual employability, lifelong learning and personal skill enhancement, has remained largely rhetorical. Compulsory arrangements, whether statutory or through collective agreement, are necessary.

A solid basic education and access to a broad range of vocational training and higher education opportunities are indispensable in a rapidly changing economy.

- **Positive solutions are possible when laws are complemented by collective agreements**

In a number of countries and sectors, both law and collective agreement are already playing a central, and often complementary, role in promoting access to training and education and, consequently, allowing individuals to enhance their skills and knowledge for their current or future work.

In many cases, national legislation frames the negotiating area (e.g. the Swedish Education Leave Act), in others cross-sectoral collective agreements have created training banks to ensure that all workers have a guaranteed number of paid hours available for professional and vocational training (e.g. Belgium).

In the best examples, these statutory rights have been complemented through sectoral and company level collective agreements to ensure that workers and companies are able to tailor their vocational training and development according to need, allowing mobility between and within companies. For example, the Belgian joint committee for auxiliary employees (the biggest sectoral committee in Belgium covering over 350,000 workers) established individual training rights over 10 years ago. These rights are managed collectively through a joint training institute CEFORA and are enshrined in the sector’s collective agreement.

UNI-Europa is convinced that this model of statutory rights complemented through the inclusion of provisions on training in collective agreements, and the development of social partner-managed schemes to provide lifelong learning, is the best way of ensuring a comprehensive and fair coverage for tailored training activities.

- **The case in IT and telecommunications: coping with technological change**

In sectors that have, and continue to experience, massive structural change due to deregulation, technological change and global market forces, like the IT and communications sectors, provisions on training are fundamental for workers’ chances in the labour market.

As some firms lose their hierarchical shape and disperse into smaller, flexible units, UNI-Europa has seen the emergence of more autonomous workers who move frequently between jobs and companies, especially in the ICT and business services sectors. At the same time, there are significant skills shortages in these sectors in Europe.
The social partners are the best placed to conclude agreements to maintain and develop the existing workforce’s skills thereby ensuring workers are not left behind and abandoned by technological change.

The latest agreement to be signed in the Italian telecommunications sector is one of the few sectoral collective agreements in the European telecommunications sector. In 2005, the social partners included rights for workers to training and study for 160 and 150 hours a year respectively, and the creation of a joint training body for the first time (source: Italian telecommunications agreement for the 2005-8). Where sectoral agreements do not exist, there have been some innovative examples of company level agreements.

- **Training to improve the quality of services and employment prospects**

In some UNI-Europa sectors, there is a strong desire from the social partners to improve the quality of the services being provided and the employment prospects of those providing them (e.g. cleaning, private security, personal services).

Since 2001, and as a means of implementing the 2000 inter-professional agreement on life-long learning, within the Belgian hairdressing, beauty and fitness sector, the social partners have operated a joint programme of continuous training for workers to maintain and improve their skills. This programme is financed through a contribution of social costs to a fund, a third of which is available for union activities and the rest is designated for joint social partner initiatives.

This scheme has been recently complemented. Individual workers are granted a ‘qualification card’, which collects training points when a worker undertakes vocational training. Once a certain number of points have been accrued the worker receives a ‘qualification bonus’ to his/her salary (source: collective agreement of joint committee 314 – 25 April 2005). Through this system, the social partners have created a win-win situation for both workers and employers in the sector (source: La centrale générale-FGTB).

- **Outsourcing and subcontracting pushing workers into precarious positions**

In practice worker mobility is often towards less protected contractual forms through the outsourcing and sub-contracting of services.

UNI-supported research into the working conditions of call centre workers, who are mainly female and increasing working on temporary agency contracts, demonstrates that poor career prospects and a lack of training provisions are endemic (source: UNI Call Centres Campaign).

Training for all workers is of paramount importance, especially to those outside standard employment contracts. We would draw the Commission’s attention to the Italian interprofessional agreement on temporary agency work (signed by CGIL/CSIL/UIL and the employers AILT/Confinterim in 1999), which guarantees equal rights for agency workers as their counterparts in the user enterprise and responsibilities for agencies to ensure training in the local regions. Examples also exist in the French performing arts collective agreement and in the UK broadcasting sector (e.g. BECTU’s training levy), to ensure freelancers' rights to training.

- **Negotiating opportunities for workers to move between contractual forms**

Increasingly, collective bargaining partners are dealing with mobility between contractual forms, in recognition of the growing use of atypical contracts in the workplace (e.g. provisions to ensure that part-time workers have priority in the selection of full-time positions in Italy). There remain many obstacles to worker mobility.
A good example to be noted is the Swedish legislation on entrepreneurial leave. Since 1998, Swedish workers have the right to take 6-months of leave from their employer to try to establish their own enterprise and the right to return to their work should their endeavours fail (source: HTF/SIF). Thus, a net of employment security supports potential entrepreneurs. Unfortunately, unions report that often employers resist the practical application of this right in practice.

- **Creating a framework for worker mobility within and between contractual types**

Worker mobility between different contracts will depend on the following preconditions:

- Workers must have a guaranteed right to educational leave to maintain and improve their skills. Improving access to training for women, ethnic minorities, young workers and older workers, should be prioritised by social partners and public authorities. Workers should have the right to paid vocational and further training, which should be made available during working hours.

- Worker mobility necessitates urgent changes to ensure the effective portability of social protection within and between countries, especially supplementary pension rights for mobile and temporary agency workers. These changes should not jeopardise, but should recognise, collectively agreed schemes which promote solidarity between advantaged and disadvantaged groups of workers.

- All clauses in contracts that prohibit workers from moving in sectoral labour markets should be forbidden (e.g. in Austria, retail workers are often obliged to sign a statement prohibiting them from working for competitors in the sector which inhibits external worker mobility). Such clauses should only be permissible for limited numbers of key personnel or leading employees.
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?

UNI-Europa believes that in some member states there is a pressing need for greater legal clarity and better enforcement of law in this area. This issue is of paramount importance to UNI-Europa and service sector workers.

- **Growth of grey zone**

Over recent years, UNI-Europa has witnessed the growth of the so-called ‘grey zone’ between the worlds of “the employed” and “independent service providers”, as companies search for ways to reduce their labour costs together with a significant growth in ‘economically dependent workers’ and the bogus self-employed.

In some UNI-Europa sectors, workers finding themselves in this grey zone are quickly becoming the majority rather than the exception.

It has been made easier for companies to exploit the situation through changes in the supply of services, a greater use of outsourcing and the creation of chains of networked companies, as well as the relaxing of rules on hiring people on a freelance or temporary basis for services that are termed casual or independent.

As the differences in treatment of workers and the self-employed have expanded, the more attractive it has become for companies to evade directly employing people.

- **Distorted competition within the internal market for services**

Employers are avoiding the rules governing the internal market for services regarding working conditions by giving their workers the status of self-employed. This is indeed a pressing issue in the context of the application of the posting of workers directive and ensuring fair competition in the internal market.

- **Freelancing workers: the cases of ICT and audiovisual sectors**

Freelance workers, such as our members in sectors such as audiovisual services or ICT services, often fall in this legal grey-zone.

These workers are not entrepreneurs creating their own work. Rather they are dependent upon contracting companies and employers in these sectors. While some choose to work as freelancers from a strong labour market position, other workers are pressured or forced to give up their employed status, and the rights associated, and must shoulder heavy costs of personal social protection. In these situations, the criterions of subordination or economic dependency are more difficult to discern (i.e. the subordination may not be contractual but de facto subordination).

Furthermore, while many contract staff fall into the Commission’s definition of ‘economically dependent workers’, as they are dependent on one client for more than 75% of their work, we would like to draw the Commission’s attention to a number of sectors where freelance workers are more often employed by a number of clients in any one year (e.g. audiovisual services).
With the exception of an elite, these freelance workers are dependent on the prevailing terms and conditions of the specific labour market. Despite this, in many countries, freelancers are denied their fundamental rights as workers to organise and collectively negotiate their terms and conditions.

Our research at national level demonstrates, that the experience of many freelance workers is not of “independent choice but of chronic insecurity” (as stated by our British affiliate BECTU in their submission to this consultation). Any proposals to ensure worker protection is comprehensively extended to economically dependent workers must ensure that freelancers, dependent on multiple clients, are encompassed in their scope.

- **UNI-Europa demands the right to organise and negotiate collectively for freelancers**

UNI-Europa demands action from the Commission to press national governments to ensure that the International Labour Organisation's fundamental rights are afforded to freelance workers throughout the European Union, meaning the right to organise and negotiate terms and conditions collectively.

In the case of conflict with competition rules, workers' fundamental rights should be respected.

- **UNI-Europa demands that there should be a statutory presumption of labour law coverage for all people working for someone**

In the event of a legal dispute, the burden of proof should, therefore, be on the employer to show that an individual is not a worker entitled to protection.
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?

UNI-Europa strongly believes that addressing the growing workforce of atypical workers, freelance and contract staff is of crucial importance to the future of European labour law and social cohesion. However, UNI-Europa is concerned that the term “floor of rights” (in question 8) would promote minimum standards which for many workers would actually be maximum standards.

The creation of a third legal category of contractual arrangement with a limited set of rights would inevitably create competition between different contractual arrangements in the labour market and, we believe, would result in the watering-down of employment rights and downwards pressure on all terms and conditions.

The experience of our Italian colleagues is instructive. The creation of a special pension scheme for economically dependent workers (lavoratori parasubordinati) in 1995, has recently been repealed due to the fact that it promoted the engagement of people as contractors rather than employees as the new category was guaranteed a smaller package of rights.

Therefore, UNI-Europa believes that all people working should be entitled to the full range of employment rights, whether they are employed on a part-time, temporary or casual, freelance or service contract basis (albeit some rights may have justified qualifying periods).

As far as the impact on job creation is concerned, we contend that there is no evidence that strong industrial relations and employment rights have a negative impact on job creation (source: World Bank, 2003).

Furthermore, the EU is committed to the creation of high-quality jobs through the Lisbon strategy, improving the position of economically dependent and freelance workers is a means of improving the quality of jobs being created.
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”?

It is essential that workers involved in multiple employment relationships know who their employer is and what their contractual rights are.

- **Legal security for temporary agency workers**

This is especially the case in the case of temporary agency workers.

The growth of the temporary, recruitment and placement agency sector over recent years is of central concern to the union movement, especially UNI-Europa as the recognised social partner for the sector.

In some countries, the user enterprise is the employer (e.g. Ireland), while in others the employer is the agency (e.g. Austria, the Netherlands).

The situation in the UK urgently needs clarification since neither the agency nor the user enterprise is legally obliged to employ the worker, leaving many workers in a precarious position. We fully support our British affiliates’ campaigns to rectify this situation and guarantee legal certainty and protection for workers in multiple employment relationships.

- **Interest representation for temporary agency workers: a pressing issue**

Allowing user enterprises’ works councils and/or unions present to represent all workers in the workplace is a means of ensuring transparency, accountability and compliance with employment rights.

The situation in a number of countries is complex.

In Austria, for example, if a temporary agency worker has a concern about his/her integration into the user enterprise, then the unions/works council in the user enterprise can defend the worker’s interests. However, if the worker’s concern relates to terms and conditions the user enterprise’s works council has no mandate to intervene with the agency involved. In the case that the agency is not complying with employment law and is therefore engaged in social/wage dumping in the user enterprise, it is nonsensical that the works council cannot intervene.

The Dutch Flexibility and Security Act (1999) approaches the legal position of temporary employees as a standard labour contract between a temporary employee and the temporary employment agency, but for the first time, the Act introduced participation rights for agency workers in the user enterprise (source: European Foundation study, 2006).

- **Subsidiary and client liability are necessary tools**

Subsidiary liability and client liability are effective and feasible tools to ensure compliance and enforcement of employment law, especially in the context of the internal market for services. This is especially important in the context of cross-border posting of workers, as the cost and risk of the legal
proceedings are high for workers involved. Public authorities have a particular responsibility to ensure that employment standards are applied properly in public works and procurement contracts.

There are a number of examples of current practice which the Commission should promote. For example, Austria’s law on temporary employment agencies (Arbeitskräfteüberlassungsgesetz, paragraph 14) makes the user enterprise a guarantor for temporary workers’ wages and the employer and employee contributions to social security funds (source: GPA). This system is due to be extended to all sectors as part of the legislative programme of the current Austrian government.

UNI-Europa would support the creation of a system of joint and several liability at the European level, as a complementary instrument to the posting of workers directive.
10. Is there a need to clarify the employment status of temporary agency workers?

Yes.

As the sector grows alongside the internal market for services there is an urgent need to clarify the status of temporary agency workers. Fundamentally, temporary workers should be recognised as workers throughout the EU and guaranteed the rights related. The temporary agency should be formal employer of the workers.

The draft directive on temporary work should be adopted without further delay providing for at least equal treatment of temporary agency workers with their counterparts in the user enterprise from day 1.

An EU wide set of minimum standards is needed to create a level playing field, helping to ensure that reputable agencies which offer genuine flexibility and good working conditions continue to thrive, whilst rogue agencies which exploit the current vulnerability of agency workers are driven out of the market. Any qualifying period would likely lead to a levelling down of protection in those Member States which already guarantee at least equal treatment rights for agency workers from day 1, and would provide a loophole for disreputable agencies.

Moreover, specific agreements ensuring that temporary workers are guaranteed social protection rights, especially supplementary pension rights (and their portability), workers representation and training should be promoted. Good practices in this area include the collective agreements on temporary agency work in France, Sweden, Denmark, Austria, Belgium and Spain.

Better enforcement of temporary agency workers’ rights is essential alongside legal clarification.
11. How could minimum requirements concerning the organisation 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 organisation of working time should be tackled as a matter of priority by the Community?

UNI-Europa is stunned that the Commission has chosen to raise this question in the context of the Green Paper. The failure of Council negotiations on the proposed amendments to the working time directive is testament to the fact that the proposed amendments have moved too far from the objectives of the directive in worker health and safety.

UNI-Europa supports the ETUC position on this matter, and calls for an immediate end to the individual opt-out to the 48-hour maximum working week.

The existing European working time regulations currently gives ample room to provide for the flexibility needs of enterprises as has been demonstrated on a number of occasions. The directive lacks sufficient support and safeguards for the flexibility needs of workers, especially in regard of the increasing demands pressing upon all workers, men and women, to take up and share care-responsibilities for children and elderly parents.
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?

In the context of the EU internal market for services, the differences in national definitions and categories of workers/self-employed are increasingly causing conflict between member states and calling into question systems which have been established to extend solidarity and protect all workers regardless of status.

- **Workers should be defined according to country where their work is done**

UNI-Europa is strongly committed to the principle of equal treatment for equal work within the internal market. Therefore, we believe that the employment rights of the country where work is carried out should be applied to all workers within its territory whether on a permanent or temporary basis. European employment legislation should promote an upwards convergence in working conditions.

As far as the EU's treatment of cases which concern cross-border movement is concerned, since the free movement of workers is a fundamental freedom the definition of ‘worker’ (in Treaty article 39) should be uniformly and broadly interpreted by the ECJ and in secondary legislation (i.e. following the *Lawrie Blum* case C-66/85). However, this broad minimum definition of worker should not limit member states wishing to adopt more extensive national definitions.

The Commission should be actively encouraging more convergent and broad national definitions of ‘worker’ where national definitions are narrow and exclude broad categories of workers (e.g. freelancers).

- **Need for greater enforcement and control of labour standards**

Alongside the growth of the internal market for services, there is an urgent need for greater investment in labour inspection and control agencies.

We consider the 2006 Irish interprofessional agreement on enforcement of labour standards to be an example of good practice in this area, in which unions have been given the power to control all workplaces regardless of whether there is a union presence in the company.

We would welcome Commission support in enhancing the role and training for labour inspection authorities as well as greater coordination between different authorities and actors involved.
13. Do you think it is necessary to reinforce administrative cooperation between the relevant authorities to boost their effectiveness in enforcing Community labour law? Do you see a role for social partners in such cooperation?

There is undoubtedly a need for greater cooperation between the relevant authorities in the control and enforcement of labour standards to fight worker exploitation and undeclared work.

As this is the responsibility of unions in a number of countries (e.g. Sweden and Denmark) there is clearly a role for unions in this cooperation. We would also recommend that a European labour inspection office should be created, as proposed in the discussions in the European Parliament on the posting of workers directive.

The penalties for companies breaching labour standards should be increased dramatically to provide a real disincentive to bypassing the rules.

Moreover, there is a great need for better enforcement of existing European social and employment legislation in general, as well as European-level social dialogue agreements. The latter may involve the development of European monitoring and controlling systems responsible for clarifying the legal character of European agreements and establishing a framework for negotiations and enforcement procedures for these agreements.
14. Do you consider that further initiatives are needed at an EU level to support action by the Member States to combat undeclared work?

Undeclared work should be combated because of the cost it poses on workers affected and the public purse. It encourages unscrupulous employers, fosters illegal mobility and has highly hazardous implications for worker health and safety.

There is a need for a European agreement on implementation and administrative cooperation over control in order to reinforce European policies fighting against undeclared work, wage and social dumping.

Moreover, greater administrative cooperation is needed to counter the human trafficking of workers and undocumented migrants. Undocumented migrants should not be victimised and should be given a legalised status and employment rights, as far as possible.