A. Introduction

The general idea of the green paper is to launch a debate of how to modernise labour law in the EU countries in order to support the Lisbon strategy of sustainable growth with more and better jobs. The Commission considers this modernisation as essential to the success of companies (and workers). The Green paper in fact looks at the possibilities to create a common legal framework in Europe for labour legislation. The EMF is not opposed to the idea of a modernisation of labour law in Europe nor opposed to the general idea of a common legal framework as such. But there are of course several elements we need to take into consideration. So it is one of the basic assumptions of the green paper that a reform would be necessary due to the fact that the current situation in most of the countries actually prevents or disrupts a more active labour market policy. The EMF states clearly that this basic assumption is not proven and that examples from several countries show that the current situation already permits the introduction of new forms of work organisation, including flexibility.

The paper starts in fact with the basic visible element of growing and increased flexibility in most countries in Europe, resulting in an increased number of divergent contractual formats.

This is also the analysis made by the EMF. Examples from different countries show abundantly the increased number of contracts forms available today on the labour market, and all the problems related to this issue (not in the least unclarity about the legal aspects of these contracts and uncertainty about the formats from the workers perspective as well as often the employers perspective).

The Green paper continues to state that the European labour markets face the challenge of combining greater flexibility with the need to maximize security. By putting this so high on the agenda, it becomes clear that the Commission is hereby
making a link between this green paper and the current drive towards the export of the so called Danish flexicurity model.

Although this model clearly works in the case of Denmark, there are many reasons why such a model cannot be exported as such. This has in part to do with the existing system of high level social security in Denmark and with the active labour market policy that is followed. But it has also connections with culture and traditions. This system has been in use for over 50 years in Denmark and the population is not only used to it, it is essentially also so that workers in Denmark, much more then in other countries, are in favour of changes in workplace and jobs.

As stated before the EMF is not opposed to a modernisation of labour law, nor to the general debate on flexibility, but this cannot be one-sided and restricted to flexibility demands of employers. Flexibility in jobs, in careers and opportunities, in working time, ... has to be considered also in the light of wishes of the employees, taking into consideration a good balance between personal and working life and the social cohesion of society. The EMF points clearly out the important role of life-long learning in this process, both for the career and job opportunities involved as well as for the companies. Trade unions have since long recognised this essential part of a modern work organisation and are playing a key role in training processes, recognising at the same time the equally important responsibilities of the employers.

The EMF clearly states that we are not opposed to flexibility as such, but it has to be flexibility with certain preconditions:

- we can only accept a negotiated flexibility, not an imposed one
- as such we cannot deny that labour law can play an essential role in opening possibilities for flexibility, but it should not create automatisms
- flexibility is not acceptable without real security, adapted to the traditions and principles of each country and set up with the social partners of these countries
- flexibility cannot lead to precarious employment
- labour law has a role to play, but in securing and stabilising the contracts forms and the flexibility elements.
- Flexibility cannot be considered without employment security elements
- New contract forms have to lead to stable employment and decent work.

In fact we are asking ourselves sincerely the question if any kind of European project can actually with such a broad perspective, take into consideration all of the existing differences in the European countries. One general solution is clearly not a viable answer.

B. Concrete questions

| 1. What would you consider to be the priorities for a meaningful labour law reform agenda? |
| 2. Can the adaptation of labour law and collective agreements contribute to improved flexibility and employment security... |
| 3. Do existing regulations (law or CA) hinder or stimulate companies... |
| 4. How might recruitment under permanent and temporary contracts be facilitated ... |
| 5. Would it be useful to consider a combination of more flexible employment protection legislation and a well defined assistance to the unemployed (active AND passive labour market) |
| 6. What role might law and/or collective agreements play in promoting training |

The EMF states that any reform of labour law should aim at and focus mainly on:

1. safeguarding minimum the existing social standards
2. harmonising upwards the existing labour codes of the different countries (referring to simply the ILO standards as a minimum is not acceptable)
3. Establishing a European minimum labour code, defining what in Europe could be considered as decent work.
4. Avoiding any kind of intra European social dumping based on an unjustified competitive advantage on labour law and social protection.
5. Creating a framework for social dialogue and collective agreements to create the concrete elements of new labour organisation models inside the sectors and companies. In fact in general the EMF is of the opinion that too less attention is given to the essential role that collective bargaining can play in this process. It is a proven fact that new forms of work organisation introduced through bargaining are much more effective and accepted then those who are unilaterally imposed.

The EMF also points out the fact that the Green paper focuses to much on this one aspect of labour law without having the same interest in all matters related to general labour law. The EMF states that any modernisation of labour law should emphasise all elements of labour law.

Unfortunately in most cases increased flexibility especially in contracts results still in more reduction of employment security and/or more precariousness of other forms. This will be the highest challenge. Collective bargaining, together with labour law, should provide here answers.

Also we would like to point out that the Green paper focuses too much on on external forms of flexibility (contracts, ...) and almost not on internal flexibility (work organisation, ...). The EMF points out that inside companies already a lot of internal flexibility exists.

It also has to be pointed out that, although flexibility can work both ways, employers are still mainly very reluctant to accept any changes in labour organisations or contracts forms that are asked or wished for by employees. The current way remains too much focussed on the one way street of greater competitiveness for the company through more one-sided flexibility. The wishes from employees for more individual flexibility, for instance in hours worked, contract forms, career breaks, ... are too often seen by employers as disrupting the normal work organisation. When investigated more deeply we see that these forms often are at the basis of functioning and more flexible work organisation methods in several countries.

Equally is it clear that any kind of combination between active and passive labour market policies can be useful as long as they are debated and adapted to the existing national systems AND traditions. Huge one-sided changes can only provoke an increased feeling of insecurity. Any changes have to be made gradually and with the acceptance of the social partners.

As to the role law and especially collective bargaining can play in promoting and opening up possibilities for training we can only agree. The EMF has since long been a keen interested party in life-long learning and vocational training issues, stating very clearly the role the trade unions have also to play in this domain. Moreover we have since 2005 adopted our first common demand to be introduced in all collective bargaining rounds all over Europe specifically around the topic of training.

Training as such is considered to be opening career opportunities inside a job as well as creating possibilities to change jobs, to increase employment stability as well as employment opportunities. Training and life-long learning is in this sense an absolute necessity for a modern work organisation based on innovation.
7. Is greater clarity needed in Member states about ‘legal’ definitions of employment and self employment?
8. Is there a need for floor rights dealing with the working conditions of all workers, regardless of the form of contract?
9. Do you think the responsibilities of the various parties within multiple employment relationships should be clarified...
10. Is there a need to clarify the employment status of temporary agency workers

There is without any doubt a need for a clear definition all over Europe to define the differentiation between employed and self-employed. The basic element of such a definition should in any case still be the notion: “working under direct orders and supervision”. If this is the case than a worker has to be considered employed and not self-employed.

It would certainly be a good idea that the same minimum basic rights would be available to all workers regardless of their contract form. This would create more security for all workers involved.

In most countries, although not all, there is already a clear definition about the employment rights with regards to multiple employment relationships. This should certainly be extended to all countries, without the need for a concrete harmonisation. The definition is often based on agreed and traditional viewpoints in different countries and this should be respected. Where this is not the case yet, this should certainly be done for temporary agency workers.

11. How could minimum requirements concerning the organisation of working time be modified in order to provide greater flexibility for both employees and employers ...
12. How can the employment rights of workers in transnational context be safeguarded...
13. Do you think it is necessary to reinforce administrative cooperation between the relevant authorities...
14. Do you consider that further initiatives are needed at an EU level to support Member states to combat undeclared work

Any kind of modification can only be done by accordance with the social partners and by collective agreements. Transnational workers, especially frontier workers form a special category of workers were the basic principle should be that direct working conditions (including wages) should be considered on basis of place of employment, whereas other elements of social rights and protection (health, pension, basic social security) can be considered in their home countries, provided a mechanism exist between the countries involved (bilateral agreements) to organise this. Otherwise the person should have acces to the social security system of the employment country.

In this sense it is evident that a reinforced administrative cooperation between the EU countries is not only needed, but even necessary. The EU can in this sense certainly provide further help to support the countries in their struggle against undeclared work.