CEPI response on Green Paper on
“Modernising labour law to meet the challenges of the 21st century”

The key policy challenge – A flexible and inclusive labour market

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

CEPI actively supports the work of the Social Dialogue and participates at the sectoral Social Dialogue on the audiovisual sector. However, it is of the opinion that there is no need to reform European labour law. Within the entertainment industry more generally, it is absolutely essential that producers have the flexibility to engage freelance workers. Due to the nature of the industry this has been the case in the past and CEPI believes that greater clarity is needed on the status of freelance worker. For our industry it would be important that the agenda focuses delivering the Lisbon Objectives by addressing the non-legal, policy components, such as focusing on the future skills agenda rather than seeking to implement labour law reform.

2. Can the adaptation of labour law and collective agreements contribute to improved flexibility and employment security and a reduction in labour market segmentation?

Within the audiovisual sector, where short-term freelance engagements are fundamental to TV and film production, we do not see a need for significant European labour law reform.

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 European independent production industry is characterised by small and medium sized companies. Experience shows that small producers working within a creative innovative industry are disproportionately burdened by regulation and high administrative cost. In order to foster the creation of new businesses in the audiovisual sector, administrative and regulatory obstacles to the setting up and management of small business should be reduced.
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?
The engagement of freelance workers within the independent production sector is absolutely fundamental to the proper working of the creative industry in the European Union. Independent producers, by necessity, must be able to call upon a pool of highly skilled freelance workers when commissioned to produce TV programmes, or film projects. However, CEPI agrees that a degree of stability of freelance engagement should be given. But we believe that it is best dealt by the parties involved within the various Member States, since they are best positioned to provide a suitable solution within their respective Member State due to the fact that an array of options are used within the EU.

Modernising labour law

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?
CEPI is of the opinion that flexible employment protection legislation and assistance to the unemployed and social security policy should dealt with by the Member States individually, since social security and welfare systems differ from Member State to Member State.

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 overall legal system and labour law have a role to play in ensuring that companies' economic and social activities can be carried out efficiently and in giving the employer the managerial power to supervise employees' activities and protect employees in their position of legal subordination which is intended to guarantee respect for their individual rights.

It is also agreed that collective bargaining allows the law to be adapted to the needs of those who apply them and of those to whom they are supposed to apply. Hence the need for a link between the law and negotiated rights, according full importance to collective bargaining and ensuring that the agreements endure, even in case of changes to the law.

The audiovisual sector has many employees with insecure contracts (some without recognized, confirmed initial training), and the great majority of companies in the sector are small or, even, very small.
Collective bargaining can help ensure that all employees, and particularly those with insecure positions, have access to certain social provisions, regardless of the size of the company. Those provisions may include:

- Access to continuous professional training for employees with insecure contracts to help ensure versatility and adaptation to new technological developments and procedures through an offer which will itself evolve for activities at the heart of an ever-changing profession. Ensuring access to continued professional training for employees with insecure contracts may be based on a possible sharing system for collecting funds. It should promote the possibility of professional retraining for employees in their professional careers.

- The final period of contracts for long-term cooperation may be "accompanied" by employers. The latter may also have an interest in providing professional retraining for their staff. A procedure for validating experience acquired might also be set up to help employees during transition periods and to prepare their future career prospects.

Uncertainty with regard to the law

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?

There is a need for more clarity in this area. The audiovisual sector is characterized by a wide range of employment relationships: people work as employees, workers, freelancers and self-employed and as temporary workers from agencies. They work on permanent contracts or fixed-term contracts, and on a full-time, part-time or casual basis.

The meanings of the above terms vary from one country to another, far more than had been imagined by the employers’ representatives and trade union professionals working in the sector. We do not have a common terminology when using these terms. It is therefore advisable that we, and the EU, have greater clarity regarding the rights and obligations associated with the different working relationships.

The definition of these employment and contract terms is also linked to other fields of law, such as taxation and social security, which mainly determine the legal status of the worker. The social security system in each country is not a matter of discussion, but it is crucial to the debate because the position of those who work in each country is highly dependent upon the nature of this system.

It is necessary, therefore, to examine the position occupied by labour law and the current employment rights and obligations of each working group within these other fields of law.

The EU proposals suggest that a "one-size-fits-all" solution is neither possible nor desirable. The audiovisual sector has, as stated above, the full range of
contractual and working arrangements which legitimately vary from one Member State to another, and these differences need to be both understood and acknowledged.

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?

CEPI believes that the social partners are satisfied with the floor of rights already set by the EU Directives (i.e. Working time directive, Framework directive on safety and health, directive on equal treatment in employment and occupation, directive on posting of workers, etc.).

There are mature arrangements concerning rights, obligations and working agreements which have developed in the audiovisual sector and in subsectors across the Member States. The members of Social Dialogue Committee do not believe that it is helpful to have further EU legislation on these matters. Best practices should be identified and encouraged by the EU, but there is no requirement for further legislation in that field.

Three Way Relationships

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 a flexible business environment is maintained where the full range of contractual arrangements are available for the negotiating parties to use. We consider that member states governments should retain discretion on the developing legal frameworks within which temping agencies and sub-contracting operate.

10. Is there a need to clarify the employment status of temporary agency workers?

Due to the vast difference in the employment status of temporary agency workers between Member States, there is a need for more clarity on this matter.
Organisation of working time

11. How could minimum requirements concerning the organization 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 organization of working time should be tackled as a matter of priority by the Community?

As television and film production has unique demands for flexibility, it is in the interest of production companies and the workers to retain considerable flexibility in working time. Yet again it would be advisable for the EU to recommend some best practices in the audiovisual sector, but CEPI does not believe that European legislation can regulate working time across the EU, due to the unique need for flexibility in working time in the audiovisual sector.

Mobility of workers

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?

The audiovisual sector across the EU has the full range of contractual and working arrangements, which legitimately vary, from one Member State to another, and these differences need to be both understood, acknowledged and where such arrangements work successfully, best practice should be shared. Whereas CEPI does not believe that it would be helpful to have any further EU legislation on these matters, best practices should be identified and encouraged by the EU.

Enforcement issues and undeclared work

13. Do you think it is necessary to reinforce administrative co-operation between the relevant authorities to boost their effectiveness in enforcing Community labour law? Do you see a role for social partners in such cooperation?

We consider that current systems of enforcing of Community labour law are sufficient. Should there be a review of the cooperation between the relevant authorities to boost their effectiveness in enforcing Community labour law, CEPI would like to see social partners involved in the process.
14. Do you consider that further initiatives are needed at an EU level to support action by the Member States to combat undeclared work?

CEPI does not believe that further initiatives are needed at an EU level to support action by the Member States to combat undeclared work.