Contribution on
Commission’s GREEN PAPER
Modernising labour law to meet the challenges of the 21st century

The Commission’s Green Paper on "Modernising labour law to meet the challenges of the 21st century" opens a well needed public debate on how labour law can be evolved to support the Lisbon strategy’s objective of achieving sustainable growth and better and more jobs. EUROCADRES enhances all attempts to promote a skilled, trained and adaptable workforce and labour markets responsive to the challenges stemming from the impact of globalisation and of the ageing of European societies. The idea of flexicurity highlights the challenge of balancing flexibility with the needed security for all workers. To determine the issues of flexibility we should at first establish European standards for security. EUROCADRES finds that a model of flexicurity should include substantial unemployment benefits and a programme for active labour market policy.

Nevertheless the green paper is a good starting point to open discussion. We have to consider the employment relationship as a whole and the studies show that the permanent employment relationship is what gives most of the workforce the needed security. It is not necessary to develop EU regulation or legislation in such direction that we emphasize more irregular employment relationship than permanent employment. EUROCADRES acknowledges that irregular or atypical contracts are good way to enter the job market, as far it does not lead to chain of irregular contracts without any career development.

The most basic principal in labour law is the need of protection of weaker party to the employment contract. It is a strong principal we should not change even for flexicurity. If the social partners cannot reach an agreement, we should argue for an EU-level directive of employment relationship, which states clearly the minimum standards for all employment relationships in EU countries. The definition as such of the employment relationship as distinguished from independent and self employed work should be left to national law practices.

For EUROCADRES´members mobility and the right to move from one Member State to another and exercise their profession is absolutely fundamental. Most managers are drivers of change and they emphasize the growing demand for European guidelines to handle employment issues. In other hand the professionals emphasize the security guarantees in flexicurity model. It is given that Social dialogue is essential if new models for security between employees and employers are made.

Employees also need flexibility. Strict and increasing use of competition clauses or specific dismissals conditions in employment contracts is mobility obstacle for professionals and managers. There is an attractive job market for specialists and general shortage of specialist has made the companies protectionist. Professionals and managers should not be forced to accept competition clauses in their employment
EUROCADRES insist that there must be better regulation of competition clauses so those clauses would be fairer and flexible to professionals and managers.

EUROCADRES would like to underline the need for developing further consultation and information between employees and employers at the workplace or to be more precise an open dialogue between the two partners. To this end EUROCADRES would like to highlight the growing demand that all employee groups, including professionals and managers, having employee representative in this dialogue.

International working environment changes and increases the demand for highly skilled workforce. There is more demand for adequately educated labour force than ever before. We should acknowledge this change and its implications to the development of labour law.

Globalization has changed the labour markets all over the world. There are big differences in labour standards between European countries and between growing economies in Asia. The right solution for minimizing of this gap is not by lowering the labour law standards in EU countries, but to find new ways for developing new balanced flexicurity models.

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

EUROCADRES advocates a European Labour Law framework, which would determine those minimum requirements for secure employment relationship. EU Labour Law should include common guidelines for employment contracts and employment relationships, such as obligations to give written information on the principal terms of employment, on the applicability of collective agreements, on the minimum wage standards, on pay during illness, on family leaves, etc.

We have several European Directives in labour law area, but they are lacking coherence: Working Time Directive, Posting of Workers, Employer insolvency, Information and Consultation of Employees. A single European labour Law directive could create a legal platform for the European Labour Force.

On the basis of article 137 of the Treaty, the Community can support and complement the activities of the Member States in the area of social policy. In particular, it defines minimum requirements at EU level in the fields of working and employment conditions and the information and consultation of workers.

2. Can the 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?

It looks the labour law can play a role in advancing a “flexicurity” agenda in support of a labour market which is fairer, more responsive and more inclusive, and which contributes to making Europe more competitive. EUROCADRES would like to stress that there is possibility of flexibility within the framework of permanent employment, not only in atypical employment relationship. According to national practice and a collective agreement social partners at National and or company/sector level already introduce flexibility in different ways.

Regulation concerning existing atypical employment relationships must be developed in such a way that equal treatment and non-discrimination can also be ensured in these employment relationships and in all terms of service. This would also level the playing field for companies, making their operational preconditions equal. It should not be
possible to diverge from the minimum regulations other than through a collective bargaining agreement. The rights to contract through the collective bargaining agreements could be channelled at the local level and local agreements could be further developed taking into account the need for flexibility. The implementation of the minimum regulations must be monitored with adequate efficiency.

**Flexibility must truly be a two-way process.** Taking into account the actual possibilities for flexibility in the employee’s current situation will result in a positive commitment from the employee. Voluntary flexibility is the only way to reach sustainable and profitable development and increase productivity. Innovations are only created in companies where the employees are physically and mentally fit and have the energy to maintain their know-how through training and orientation.

Flexible working time systems must be developed in a way that promotes the accommodation of family duties and work needs. In several European countries there are examples of arrangements (‘working time savings accounts’, ‘hour bank’- and ‘working time bank’ system) - operating at the company or workplace level - easing the accommodation of work and family: working time arrangements, earned holidays or money converted into free time can be saved or borrowed as well as combined on a long-term basis. The employee is able to choose how to use his/her free time, for example, with family or for training, and s/he is not bound by the strictly defined purposes of use characteristic of socially subsidised free time.

3. *Do existing regulations, whether in the form of law and/or collective agreements, hinder or stimulate 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 ways of working and the operating environments at companies have been transformed through **the development of technologies and globalisation.** Work no longer takes place in a fixed location: technical devices enable work in other places and increasing globalisation requires travel and scheduling communication between time zones during the working day. Tasks are more and more demanding and require continuous training. The significance of know-how is emphasised. The focal points of know-how are constantly shifting from traditional manual work to a more creative direction requiring more expert skills.

In their nature legal instruments are conservative, developed in long period of time. That does not mean that there cannot be interpretation in a new environment or that there is no room for evaluation.

There are many other factors that influence SME’s competitive value than Labour Law. Just from legal perspective complicated business contracts can cause much more demanding environment for SME’s than Labour Law and collective agreements together.

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?**

To promote full employment, productive labour and social cohesion, the starting point must be a full time employment contract in standard form and valid until further notice. Regulation within the Member States should not be aimed towards atypical employment relationships or arrangements except in situations in which both parties prefer such an arrangement. In order to facilitate the transition towards the labour
market, it might be preferable for young professionals to choose – on a free basis - for more flexible working contracts when they enter for the first time the labour market. Their admission ticket could be an atypical working contract for a given well defined and terminated assignment. There should however be no question that the aim - also for young professionals - is a normal permanent contract.

There is no need to add to the existing array of employment contracts, because flexibility can be developed within a standard employment relationship. This enables the needs of the employer to be matched with those of the employee while taking into account the protection of the employee. The issue should be to protect the weaker part of the workers and avoid to create a ‘second class’ employee on the labour market. For that reason a guaranteed access for all people to bank accounts and bank loans is essential.

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?

EUROCADRES finds it important to distinguish between job and employment security. Training of employees and further development and innovation within existing enterprises are crucial factor in fostering and boosting economic and employment growth.

Employment security must be improved and developed to ensure that the costs of dismissal are mainly borne by the employer who dismisses the employee; the share of costs channelled to other parties should be as small as possible. The permanence of the employment relationship must be guaranteed in situations in which working may cease through legislation or contract. These events must not affect the employees’ status or conditions of employment upon returning to work. When the employment relationship is terminated, opportunities for re-entering the labour market must be safeguarded.

We advocate the “security in change” model, which proves how cooperation among the employee, employer and labour administration can make finding work easier. An employee terminated for production and economic reasons may get a paid leave from work during the term of notice for the purposes of job seeking; s/he may be placed in a specially tailored job-seeking programme and may get enhanced unemployment benefit. The change security programme extends the social responsibilities of the employer to providing support in seeking a job. This is clearly the correct orientation when the employment relationship is terminated for a reason attributed to the employer.

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?

Legislation and collective bargaining agreements must be used to influence the type of the employment relationship and its permanence. As a rule, companies are only willing to invest in the training of permanent employees. Career development and the increase of know-how are only secured if flexibility falls within controlled, pre-set limits and if training is actually available, both topically and time-wise.

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?
Clarity in the definitions of employment, self-employment or entrepreneurship (tax law, labour law, social benefit law) is necessary on national and European level. A negotiated European Labour Law Framework could be an essential tool for realizing it. The definition of entrepreneurship must be clear and accurate so that there are no unclear categories between an employment relationship and self-employed entrepreneurship.

Nevertheless entrepreneurship must be supported to make it a viable and attractive option alongside paid employment, but it must be based on the free choice of the person undertaking the work.

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?

There must be no fringe areas among the types of employment relationships with unclear legal definitions. We favour a single European framework on these legal issues so that the interpretations on the status of work do not change from one Member State to another. It’s an important factor in lifting the obstacles on mobility for workers, which would be beneficial especially for P&MS looking for career opportunities abroad.

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”?

The employee must be guaranteed protection of minimum rights regardless of the type of employment relationship. These rights must not be conditioned on the permanent, fixed-term or part-time nature of the employment relationship or on whether the work is remote work or the employee is leased from a temporary work agency. Equal treatment with regards to minimum rights would clarify the situation for both the employee and the employer and would end unhealthy competition based on the terms of employment. Including minimum rights within the scope of the Commission Directives would guide the Member States to standardise their legislation and would create real possibilities for the mobility of labour.

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

It is extremely important to clearly determine employers’ obligations and responsibilities for temporary work agencies. Temporary agency workers must not be placed in an unequal position vis-à-vis the employees of the user enterprise. Passing a Directive on Temporary Agency Workers must ensure non-discrimination. It is also possible to develop temporary agency work in a more permanent and stable direction, particularly when the worker carries out similar tasks regularly and the work in question is not done only on occasion or a single case.

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?
The revision of Working Time Directive should be priority of Commission. There is a great demand for the protection for European labour force from increasing working hours. The definitions according to ECJ for working time and free time must be enforced by the directive. EUROCADRES has several times demanded that also professionals and manager staff needs to be included by the Working Time Directive.

The flexibility of working time should not be handled in EU-level more than a question of minimum standards. Flexibility cannot be incorporated to the regulation on the Community level, because special sector-specific characteristics cannot be taken sufficiently into account. Flexibility should be regulated nationally and locally in scope of European labour law. The national regulation – both by law and by collective agreements – is more efficient and emphasises the sustainable commitment of personnel to the company. We should also develop new instrument for flexibility, such like working time bank or common platform for local sectoral agreements.

The time, place and way of working have been changing with the development of technology and globalisation. Technical devices enable work outside of the actual workplace and employees are in theory constantly available. This must not lead to the blurring of the borders between working time and free time. There must be adequate time for rest and relaxation so that working hours are used efficiently and that safety in the workplace (both internally and in relation to third parties, such as clients) is maintained.

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 European labour market needs a single legal platform with minimum standards and practices. This is also important for the right for free movement of workers. This implies a labour law with minimum standards and legal concepts on European level. Now the different legal standards and practises in each country make it difficult for even skilled workers – in case of move to another European country - to know what should be the legal rights in their employment relationship.

Common minimum-level labour standards across Europe will lift important existing obstacles for mobile workers.

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?

All co-operations will enhance the single legal platform for European Labour force. Including social partners in a way that we can help enforce good practises in EU concerning equal employment relationships is recommended by EUROCADRES.

14. Do you consider that further initiatives are needed at an EU level to support action by the Member States to combat undeclared work?

All possible measures should be taken to combat the problems of undeclared work outside the legal system. Social dumping and the evasion of taxes distort competition and impair the success of Europe on global markets.
Community-level regulation and monitoring must be developed to ensure that the illegal system does not gain a foothold in Europe and that the right of employees to minimum terms of employment is not circumvented. The measures taken by Member States should be guided in a similar direction.