Introduction

With its Green paper "Modernising labour law to meet the challenges of the 21st century" the European Commission stimulates a discussion about the core of the future Social model in Europe. CEC considers that a common perception of the European Social model is indispensable but insists that it can only be achieved by a discussion of political convictions that are the basis of the national labour laws and industrial relations in the member states.

CEC identifies as the main priority to increase investment on enhanced productivity into the organisation of work and the training of human capital. The right to lifelong learning as part of the European Social model should be incorporated into national and European legislation.

CEC encourages member states to shift from a mere materialistic view on economical and working conditions to a more quality targeted view on sustainable development of working conditions. This is a key to safeguard the existing living standards in a globalized environment and under demographic change and rising competition in other regions of the world. Knowledge is our future basis in a worldwide knowledge based society.

CEC believes that this consultation could represent a starting point to reflect on the future European Social Model and indirectly to stimulate the re-launch of the European integration. However, some specific points need a particular attention:

- **Need for a larger coherence between economy and employment policy**

The situation and development of labour markets play a major role in the perception of the European Union in the eyes of its citizens. High unemployment rates and insecurity about the future competitiveness of jobs put a lot of pressure on the European integration. This is why CEC supports joint efforts for qualification in order to increase the performance of labour markets. Missing coordination could threaten the status of integration. Fundamental workers rights should be the basis of such far reaching discussions.

- **Responsibility of national governments**
The European Commission’s starting point is the ‘flexicurity’ model which has had good practical results for instance in Denmark. However it is not adaptable to all member states. Therefore CEC prefers to take the basic ideas of the flexicurity approach i.e. a balance between flexibility and labour security as the foundation in order to gain political support from all citizens in Europe.

- **Labour law in between organisational rules and workers protection**

The evolution of the European integration stands in front of big obstacles: Since the enlargement of the EU to the east the old concept of the single market of the EU15 is not valid anymore. What is considered to be workers protection in the west is seen as barrier to the markets in the east. What is considered to be adequate labour conditions in the east is perceived as “race to the bottom” in the west.

The questions asked in the green paper have to be regarded in the context that labour law is on the one hand organisational rules for the labour market and on the other hand workers protection law.

**Answers to the questions of the European Commission**

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

The definition of a meaningful labour law reform agenda is to be seen both in the context of national labour markets and in a European dimension, which must be present in each national reform.

However CEC wants to stress that a labour law reform is certainly not enough if the aim is the research of an added value in competitiveness. As many contributions have highlighted, either at European level either in OCDE, competitive factors are numerous (wages, relative purchasing power, social protection systems, taxation system, training system, infrastructures, etc.).

Moreover, and as recalled rightly in the introduction of the Green paper, the protective regime of national social legislations take traditionally origin in the unequal nature of the employment relationship between the subordinated employee and the employer.

The security linked to the type of the employment relationship is now evolving into a new approach favouring the security of individuals during their professional trail.

Priorities should therefore consist in defining social fundamental rights (right to a decent wage, to a social protection system, to a reconciliation between work and family life, to health and pensions, to non-discrimination, to collective expression and to lifelong learning) linked to individuals, independently from the legal form of employment relationship (public/private employer, self-employed, full-time or part-time, permanent, fixed or temporary contract, etc.). It would be however necessary to consider the specificities of the work relationship (subordination, economic dependency…) when planning the social provisions.
A labour work reform should not take into consideration just one side of the work relationship (the employee or the employer). A special attention to the impact of modifications and interventions on both sides is strongly recommended.

Generally, the EU action should focus on boosting innovation and lifelong learning of human resources within enterprises; and easing mobility. From a managerial point of view the possibility to take on an executive position in another member state while conserving a stable floor of social guarantees is crucial.

**Question 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?**

CEC believes that it is necessary to separate labour law coming from the law and from collective bargaining. Fundamental social rights must be guaranteed to the entire workforce, independently of the type of contract, through the labour law and they should never be weakened by collective bargaining.

It is also important to distinguish the level of negotiation, national, inter-professional, national and by sector of activity

The national inter-professional level of negotiation consent to mark the difference between public and private sector notably. It should ease professional mobility, qualification, insertion of unemployed people. 

The sectoral level allow adapting solutions to the specific domain. 

The single enterprise should not reconsider the provisions adopted at higher levels, because of the risk of social dumping affecting competition and of stronger labour market segmentation.

Company agreements can be considered a proper tool to achieve flexicurity because they are as close as possible to the workers situation and company’s reality.

However CEC stresses that it is acceptable only if the balance of power between employees’ representatives and employers is effective, which is not always the case.

In any case, there are too great differences in national legislations and traditions to treat these questions (increase of flexibility, employment security and a reduction in labour market segmentation) with a common European approach at all levels. 

These existing differences should be considered and respected, as the set up of general rules on negotiations would not have a positive impact.

Finally, CEC sees the segmentation of labour market mainly as the result of deficits in qualification. Lack of qualifications is an obstacle to mobility and opportunities of the workforce. Lack of dynamism in the labour market is caused by the mismatch in offered and required qualifications.

**Question 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?

As far as employees stimulation is concerns, CEC thinks that the core factors for productivity and competition, especially for managerial staff, are personal development, training and mobility opportunities as well as work life balance.

Concerning SMEs, rather than applying a peculiar treatment of social rights, CEC thinks that the principle of sectoral or local mutualisation can be an adequate answer to overcome financial and administrative burdens.

Efforts certainly still have to be made but it is always easier to point out an administrative burden related to a regulation rather than the cost of its absence. It would be interesting to measure the cost of lack of regulation for enterprises and for the whole society (unfair competition, bad working conditions, workers’ health, poverty...). It is important not to forget that labour law provides legal security to employers too.

**Question 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?**

CEC wants to stress that OECD studies have shown that there are no clear links between employment protection legislation and unemployment.

On the contrary, the worsening of working conditions that could be caused by this flexibility could hinder recruitment. Indeed some specific sectors have particular difficulties in recruitment because of bad working conditions.

One should also be aware of the consequences that a softer employment protection law might create. Indeed insecurity of the worker as concerns the term of his employment could cause disaffection and lack of motivation towards company’s success and trust in institutions. It could provoke stress, absenteeism, fall of birth rate, etc. All these factors represent a further cost.

It is instead by guaranteeing a common floor of social rights (right to a decent wage, to a social protection system, to a reconciliation between work and family life, to health and pensions, to non-discrimination, to collective expression and to lifelong learning) whatever the activity and the type of contract that employees will accept more easily some jobs. For instance, the temporary agency work in France has brought, to a peer management of social interventions, which has consented the access to rights which do not normally concern precarious work positions: social protection (mutual), easier access to housing, child care and loans. This system has been
managed for more than 10 years by the social partners. Thus **good practices** already exist that we can share at European level.

CEC sees a much greater threat to labour market dynamics in the risk of failing recruitment investments because of the **mismatch in qualification**. At least in the field of professionals and highly skilled staff, the fear of high recruiting costs ending up in a failure is a more realistic reason for reluctant recruitment.

A policy of access to the labour market which overpasses the simple aid to the unemployed is necessary. It would be useful for instance to carry out **macro-economic studies about strengths and weaknesses of the job pool** in order to make previsions about employment and competences. This overpasses a merely labour-law-oriented approach.

In any case, CEC thinks that the permanent work contract must be kept as the general rule.

**Question 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?

A more flexible employment legislation could only be possible if **fundamental social rights** are safeguarded in any individual situation, the person being employed or unemployed. This implies notably non-discrimination in work contract severance, guarantee of an adequate substitutive income, right to training, maintaining of the social protection.

CEC advocates for a deep change in the logic of the unemployment benefits systems: it is necessary to enter a **logic of ‘employment insurance’** easing the return to a **long term and quality job**, corresponding to the profile and potential of the worker. This approach is one of the elements of the wider problematic of the **security of the professional trails**.

The change of approach proposed by CEC is based on **three main axes**:

- A **substitutive income** equivalent to the last wage;
- The improvement of replacement into the labour market, through **diversified and personal advising trails** and through a **mix of training periods and enterprise experiences**;
- The **adaptation of the financing** of unemployment benefits to the new perspective of «employment insurance», by grouping State financing, social partners’ contributions and by determining entrepreneurial contributions according to the kind of contract they adopt (term contracts generating higher contributions than permanent contracts).

This different approach would also imply a **deep reform of the Employment Services systems** allowing them to provide an effective contribution to the individual’s acquisition of skills and competitiveness in the labour market. At present employment services start the relationship with the employee when
he/she gets unemployed. CEC thinks that this relationship should instead begin from the worker’s first employment or even during the studies. The employee could inform the ES about evolutions in his career and the ES could design a training path to be followed.

Social partners should be more involved in these transitory phases.

Question 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?

For CEC strengthening qualifications is crucial, it should be ensured to all workers and at all ages. Knowledge and qualifications are the keys for a dynamic labour market.

CEC is in favour of training for all categories of workers. The idea of lifecycle however has the tendency to focus only on a small variety of workers with too much focus on the low skilled workers. To be winner in the global knowledge society we also have to think about training the top level of the workforce because their knowledge tends to age more rapidly.

Law has the role of defining the right to qualification (learning, training, valorisation of the professional experience, balance of competences, career accompaniment), whose level should correspond to the average level of initial studies. Employees who did not get this kind of assistance within their initial education should have the right to benefit from it, in order to reach the desired level of competence thanks to public financed interventions. Also the right to benefit from a training co-financed by the employers and the employees could improve the level of qualification.

Recommendations of the Commission concerning common procedures to identify lack of qualification could be helpful in order to reach this objective. Social partners could negotiate a framework agreement on training and qualification, which could result into the creation of training and learning accounts in which both employers and employees should invest. Another tool could be the setting up of minimum standards of protection of workers against asking back training fees.

Moreover, the capacity of adaptation must take into account the psychological constraints linked to the working situation. Information and training before changing workplace are necessary to guarantee a correct psychological investment into the new job context. These information and preparation to mobility should be inserted in collective agreements, which is pretty rare in many national contexts.

It also has to be underlined that although CEC is actively involved in the negotiation of agreements at European level, managers have some difficulties to implement them as CEC signature is not present on the documents.

The European chemistry sector (EMCEF-ECG) drafted a common position about lifelong learning. CEC member FECCIA has joined this initiative. An essential
More briefly, law and/or collective negotiation must guarantee real efficiency and optimisation, in order to obtain:

- Better training, **adapted to needs and evolutions of the labour market** (through a qualitative and not only quantitative approach)
- **Correct utilisation of funds** with respect of objectives and through a fair financial management

**Question 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?

The definitions of « subordinated » and « independent » deserve to be clarified, not to set apart but to identify the different job realities, their common points and their differences, in order to **facilitate the step into a new work status** from the old one.

An attentive legal protection of the “economic dependent self-employees” would also help **prevent fraud**.

**CEC warns however against the extension of the scope of labour law** by including forms of self employment. This would have severe consequences in many other laws be it social or contractual law in many countries.

**Question 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?

CEC thinks that a floor of rights is indispensable to **tackle unfair competition practices** among companies. Nevertheless this floor of rights could be **modulated** in specific areas by collective bargaining to take into account national and sectoral specificities.

Respect and real **application of existing law** would certainly represent already an important step.

**Question 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"?

CEC underlines again the difficulty of a univocal answer to the problem at European level.
In a globalized economy it is difficult to consider that the main entrepreneur can effectively control the compliance with employment rights by sub-contractors who operate at the other side of the world. Thus in sub-contracting chains and in relation with the Corporate Social Responsibility, CEC pleads for the recognition of the final commander’s responsibility as well as a joint responsibility of all main contractors involved as concerns fundamental rights and labour law.

**Question 10: Is there a need to clarify the employment status of temporary agency workers?**

CEC considers that the status of temporary agency employees is quite clear in theory. What is less clear is the utilisation of this possibility by enterprises to assign jobs. The same thing could be affirmed in general for fixed term contracts. What needs to be controlled and clarified is the global time of employment of the same worker within an enterprise through different ‘precarious’ contracts.

A better regulation and frame-working of temporary agency work could prevent from abuses of the workers’ weak position. In our opinion French regulation could serve as a good practice from this point of view. CFE-CGC, CEC French member, signed in 1990 an inter-professional national agreement on this topic and got involved in the management of organisations dealing with this kind of contracts and workers.

**Question 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?**

CEC thinks that in order to guarantee health and safety protection it would be necessary, first of all, to ensure that Member States have the right instruments to control the application of the labour law.

It is also not to be forgotten that working time has always a strong impact on two sides: on the salary (often time influence considerably the amount) and on the physical/mental health of the employee. In CEC’s opinion a common base of health protection is needed (not exceeding 48 hours a week) and flexibility should be limited within such frame.

CEC believes there are some good practices and national example to take in consideration at this extent. In different countries, for instance, it is possible to have a year-based calculation and a modulation of the working time over this period.

**Question 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 idea to create a common definition of what is an employee in Europe is to be managed in a careful way, with regard to the large diversity of labour markets across Europe. The potential gain in clarity could have to be paid with severe political discussions, which would not be beneficial to the European integration.

However a common framework of minimum standards could be ensured to every worker in the whole European Union (health and safety, freedom of expression, non-discrimination, access to training...).

CEC thinks that at EU level emphasize should be put more on recognition of diplomas and qualifications.

**Question 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?

CEC thinks that more administrative cooperation between the authorities is necessary first of all within the Member States themselves and beyond the simple labour law. Member states should be encouraged to control the implementation of their regulation on labour issues in their own countries.

Due to globalisation and the European integration it is crucial to reinforce this cooperation also at European level to guarantee effectiveness of control.

In this context the role of social partners should be enforced. Their role is to monitor the application of Community labour law by the Member states.

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

Yes, CEC thinks that in particular that the EU should allow a better control and coordination over migratory fluxes, which provide undeclared workforces into the labour market.

CEC also encourages the European Commission to explore ways to finance social welfare in order to fight against undeclared work, for instance, by shifting social protection systems to tax on consumption.

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