Response to the EC Green Paper
“Modernising labour law to meet the challenges of the 21st century”

The European Club for human resources (EChr) welcomes the European Commission initiative to launch an open consultation on the role and scope of labour law in support of European competitiveness, labour market effectiveness and inclusiveness. This contribution to the EC consultation relies on the EChr secretariat views, on the results of its pan-European HR barometer, and on the work of an ad hoc task force involving HR business practitioners that was set-up for this purpose.

A timely and necessary debate

The widening gap between the current legal framework governing employment and the fast changing reality of the world of work, require an in depth debate within and among the different stakeholders in Europe. However, such exchange of views, and the underlying analysis of the wide range of systems, conditions and expectation of people at work cannot be confined to the green paper process and to the issues raised by the Commission in that context. Eventually this should be seen as an opportunity for fostering and deepening the debate at the national level, where is the bulk of the responsibility in labour and employment law. The European Commission, for its part, should focus more, and better with greater rigorouousness, on the development of benchmark analysis and best practices emerging at the national level and in cross-border operations in relation to the implementation of EU provisions and to national specific mandatory requirements. The EC could also encourage the establishment of open and permanent pan-European networks of existing centres of expertise in the different countries, with a view to facilitate knowledge sharing and forward thinking analysis on labour market developments and regulatory changes affecting people at work.

A new focus for labour law

The expansion of trans-national business production models and the increasing level of interdependence among national economies, both underpinned by new far reaching technological progress, are the main drivers of change in business organisation and labour sourcing.

Globalisation and the emergence of the “networking corporation”, where the company is more a centre of coordination of different entities and centres of excellences established in accordance with market and efficiency needs, are additional sources of productivity growth although they can
create locally some labour market turbulences. This leads to competition not only among economic systems but also among legal and social systems. In such context labour law and labour supply, in all their different facets, are part of a business comparative analysis that influences job creation and growth.

Labour law at the European and at the national level should evolve towards a regulatory framework that pay more attention to the new production models and to the emerging needs and behaviours of a more diverse workforce rather then focusing exclusively on the protection of rights of those already in employment. The diversity of contractual forms of employer-employee relations that often reflect different levels of maturity of business development and, at the same time, accommodate the needs and aspirations of some segment of the workforce should not be seen as a cause of social divide among the different employment status. On the contrary, according to the official employment statistics, these different forms of employment are those that have allowed an expansion of employment in Europe and a reduction of unemployment rate even in the context of a moderate economic growth. The availability of “non-standard” labour contracts has allowed business to make new hire with a view to test, explore and satisfy new market needs not yet consolidated as such to justify permanent recruitments. While large segment of the active work force, especially young job seeker and women have had the opportunity to access employment and often develop a first or a new professional experience.

**Addressing the specific questions of the EC Green Paper**

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

- The essence of the current debate launched with the Lisbon Agenda focuses on how Europe can succeed while facing demographic trends of population ageing, rapid technological change, and the emergence of a global economy. In this context, it’s important to distinguish between the European values underpinning our social models from the institutions and instruments set up by each Member State to translate into practice their specific version of these values and models. Whereas common values underpin each social model, individual countries have developed their own approach, reflecting their cultural, political and social priorities. Today new realities seem to challenge more the adequacy of these structures and policies rather than the funding values themselves.

- Unemployment and labour market inefficiency are key challenges from a social and from a business perspective. A meaningful labour law reform agenda should focus more on giving people the skills they need to remain adaptable throughout their working life, rather than protecting individual jobs. Europe needs to foster an environment where legal frameworks do not protect insiders at the expense of the real outsiders – those who are out of work.

- As to the issue of evolving workforce models, it is important to recognise the positive contribution and therefore the legitimacy of alternative forms of work and business models – e.g. independent contractors, outsourcing, agency work, subcontracting etc. – in helping firms respond to the accelerating pace of change in the market place, but also in satisfying for some employees new needs.

- It is an outdated idea to consider as “non-standard” all forms of work which depart from the model of the permanent or indeterminate employment relationship with a single employer constructed around a full-time, continuous working week. Rather, modern forms of contracts, like agency work, subcontracting and self-employment are becoming frequent features in European labour markets. In most cases, companies do not make use of these types of contractual relationships with a view to circumvent their obligations under labour law.
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?

- Quality and flexibility are very often two sides of the same coin. Alternative contractual relationships offer considerable opportunities for workers. In a knowledge-based economy, people are looking for jobs that offer meaning, autonomy, motivation, learning opportunities and work arrangements that allow them to progress into their professional carrier path while reconciling work with private life.

- It is sometimes contended that new forms of contractual relationships have negative side effects, as workers on such contracts are believed to be in a “precarious” position due to lower levels of employment and social protection. Some argue that workers enter into non-standard contractual relationships for lack of anything better, because they cannot find a full-time permanent employment contract. Both arguments represent the idea that new forms of work create situations which ultimately result in dual labour markets with distinct “insiders” and “outsiders”.

- A job is the best safeguard against social exclusion. In that sense, the real outsiders are those with slim or no chances to enter or re-enter the labour market because of poor access to training and education and because of rigid employment protection legislation for regular contracts which deters employers from hiring. Such lack of opportunity in combination with over-regulation is driving the real segmentation of labour markets.

- Accordingly, adaptation of labour law can contribute to improved flexibility and employment security and a reduction in labour market segmentation, and that this is best achieved by easing employment protection legislation for regular contracts in those countries where it hinders adjustment to permanent shocks, and especially where it has led to a dual labour market.

- Social dialogue has in some countries by tradition a very strong role to play and can contribute to making labour markets more responsive to change. However, there is no "one-size-fits all" model for social dialogue and the different national traditions and cultures have to be respected. Moreover, governments should engage a wide range of stakeholders in the public debate – a multi-stakeholder approach – so as to ensure that the views of all groups are heard.

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 main sustainable sources of raising productivity are innovation and organizational effectiveness. That means new products and services which give rise to fast-growing new businesses, but importantly also new ways of organising work. Today innovation is much more about transforming business processes and exploring new business models than in the past, when innovation primarily took place in the laboratory. This is especially true in services. The changing nature of innovation has made organisational agility a key component of competitiveness.
Business model innovation requires flexibility and openness for structural change. Change is more readily introduced if there is a conducive business environment if organisations cannot transform or it takes too long or is too costly, and then innovation will not occur or will not provide the benefits that drive investment.

This conclusion has important implications for public policy in that employment legislation facilitates or restricts the development of innovative business and workforce models.

Today employment legislation in some countries hinders innovation from taking place. In some – but not all Member States – the rigidities of labour markets contribute to impede companies from being innovative and maximising innovation and new technology to achieve the same level of productivity growth seen in other geographies. Social models need to facilitate, to a greater extent, transformation and adaptability of enterprises and workers, thereby allowing for production of both services and goods to shift to higher-value added segments.

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?

There are still obstacles that need to be overcome in order to increase firms’ incentives to hire and promote the wider usage of innovative forms of work on the side of governments, employers and also society in the area of legislation, education and public awareness.

In the area of labour law the challenge is to get it right – to provide opportunity and acceptable standards while ensuring that the rationale to create resilient and responsive organisations is not undermined.

The starting point for a debate on the future of labour law must be that in a global environment, job security will not come from just protecting individual jobs but from giving people the skills they need to remain adaptable throughout their working life. Investment in people’s skills needs to be increased and better targeted notably by companies themselves, laws and regulations must at the same time be able to accommodate rapid economic, social and technological change.

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?

Europe needs a strong and positive agenda for social renewal to earn people’s support. This agenda however should not be complacent or driven by the traditional ideological divide that opposes competitiveness to social cohesion. While aligning with a shared vision and common values, this agenda has to be made locally relevant by allowing that each country’s road to success will have its unique features. This acknowledgement is important as nearly all the main accountability still fall on national governments, not the EU.

To be both effective and actionable, an agenda for renewal should balance three different types of social innovation strategies. The three closely interrelated types of strategies involve...
accelerating reform of the regulatory environment that reduce labour market rigidities, investing in education, training and research and adopting a system that provides financial security in the case of unemployment.

- Reform will not only mean making it easier for companies to transform. It also means taking action to improve people’s ability to transform and cope with rapid change. Workers' capacity to adapt to change has to be improved as the industrial age turns into the global age, where life-long employment is becoming a thing of the past. Part of a positive prospectus for modernisation is the idea that in exchange for granting more flexibility in dismissal rules, we need to invest in people during all their working life.

- Clearly, any welfare programme that aspires to reduce long term unemployment and inactivity will have to tie active labour market programmes closely with access to financial security in times of unemployment. Welfare programmes need to be customised to meet individual needs and the offer of unemployment benefits, counselling and retraining should be looked at as a package.

- To build such integrated “flexicurity” strategies, Member States need to improve their capacity to learn from each other.

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?

- If some of the terms and conditions of “traditional” work contracts are extended to all contractual relationships, companies will be prevented from transforming and exploring new business models and hence from innovating and even expand their work force.

- A floor of rights already exists in the EU legal order and is justified when it aims to ensure the respect of fundamental European values (E.g. in relation to combat discrimination). A further convergence of employment rights might be possible only through a bottom-up approach that takes into account national labour policies and practices.

9. Do you think the responsibilities of the various parties within multiple employment relationships should be clarification 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"?

- There should be a clear distinction between temporary agency personnel and subcontractors. They are not the same thing and should not be categorised as such, e.g. while temporary agency workers are deployed in the business organisation of the user enterprise, employees of the provider in case of subcontracting are not.

- Sub-contracting, micro-enterprises development, temporary work agencies and outsourcing all have legal frameworks that function effectively and are critical components of the modern labour market and of the new production models.

- The reason companies make use of temporary agency personnel is a commercial one, not an employment one. Companies reach a commercial arrangement with an employment agency whereby the employment relationship rests with the agency.
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?

- Further clarification of the rights of workers might be required, as they currently rely on the provisions of the Rome convention. The Rome convention should not preclude the application by Member States -in compliance with the Treaty principles, to national undertakings and to the undertakings of other States on a basis of equality of treatment- of terms and conditions of employment laid down in national social legislation and regulation, the collective agreements or arbitration. Further investigation in this area could help to resolve the issue of conflict of laws and predictability of law implementation.

ABOUT THE EChr

The European Club for human resources (EChr) is a financially independent non-profit association based in Brussels. The ECHR brings together senior executives responsible for human resource policies and practices in large international corporations based in Europe.

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The task force, chaired by Leonardo Sforza, Head of Research and EU affairs at Hewitt Associates, involved representatives from the following organisations: ACERTA, AIR FRANCE-KLM, EUROPEAN BANKING FEDERATION, IBM, LA POSTE, PUBLICIS GROUP, RENAULT, SECUREX, SNCF, TOYOTA, UNION WALLONE DES ENTREPRISES.

The views expressed in the EChr response do not necessarily reflect the positions of the individual company members of the European Club or participants to its working groups.