GREEN PAPER “MODERNISING LABOUR LAW TO MEET THE CHALLENGES OF THE 21ST CENTURY”

CEEMET ANSWERS TO THE QUESTIONNAIRE – 30 MARCH 2007

Introduction

CEEMET represents the interests of employers’ organisations in the metal, engineering and technology-based industries from 21 countries with a particular focus on social policy issues. Our member organisations currently represent around 200,000 companies, employing some 12.5 million people.

CEEMET welcomes the launch of a debate on the modernisation of labour law to meet the challenges of the 21st century in the framework of a wider reflection on the “flexicurity” concept.

According to the Commission, the Green Paper “looks at the role labour law might play in advancing a “flexicurity” agenda”. Labour law has traditionally been aimed at protecting employees and, in general, contributes to considerable “security” of employment. Reading the Green Paper, CEEMET has the impression that the broad concept of “flexicurity” is still overemphasizing “security”-related aspects to the detriment of the “flexibility” approach.

As a general remark, we would like to underline that the level of protection of workers in European and national regulations is generally very high on an international comparison.

In the context of globalisation, labour market adjustment is particularly important in ensuring that resources are redeployed swiftly and efficiently in accordance with new areas of comparative competitive advantage. The rigidity of over-protective labour laws is not appropriate for the need to adapt rapidly to economic changes and has become an obstacle to the creation of employment in the labour market. Excessive and inappropriate employment regulations tend to protect “insiders” at the expense of “outsiders”. The Green Paper on the modernisation of labour law should be used as an opportunity to make Europe better able to cope with increasing competitive pressures. That is why, in CEEMET’s view, “advancing a flexicurity agenda” in the field of labour law today means advancing a sensible “flexibility” agenda.

Flexible labour markets offering appropriate security for workers and opportunities for jobseekers are an important precondition for competitive companies and are also a prerequisite for maintaining and increasing sustainable employment.
EXECUTIVE SUMMARY

1. CEEMET welcomes the launch of a debate on “Modernising Labour Law to meet the Challenges of the 21st Century”. In CEEMET’s view, the modernisation of labour law is in the first instance the competence of Member States. Labour law is a vital part of the framework determining the environment in which companies operate. CEEMET members are convinced that more flexibility in this area is one of the preconditions for improving competitiveness.

Safeguarding and promoting flexibility within labour markets is essential for a competitive European manufacturing industry. Whereas the analytical part of the Green Paper contains several important and helpful statements, CEEMET has the feeling that some of the questions in the Green Paper overemphasize aspects that are related to “security”.

2. CEEMET is of the opinion that a well balanced approach to “flexicurity” will result in an environment that provides many opportunities to adapt the different national systems to current and future challenges.

In particular, CEEMET stresses the importance of the so-called “non-standard” employment contracts which have become an increasingly common pattern as they meet the needs of both companies and employees. For example, temporary agency work is a regular type of employment in the labour market suiting the needs of both companies and individuals with adequate national legislation or collective agreements.

3. No “harmonization” of labour law at the EU level is needed. Consequently, we do not see a need for a harmonised definition of “employment” and “self-employment” at EU level which would also have a serious impact on national labour laws and social security systems.

A more convergent definition of “worker” is also unnecessary. This term is already sufficiently defined in national laws and by national labour courts and this position must be maintained.

4. Furthermore, CEEMET does not see the need for an EU level “floor of rights” for all employees regardless of the form of their contract. Such an initiative would also be contrary to the principle of subsidiarity.

5. CEEMET would like to emphasize the importance of supporting employees in the process of their transition from one job to another so that flexibility is not seen in a negative way by employees. Ways of achieving this would be to encourage all relevant stakeholders to invest in a commitment to lifelong learning and to develop appropriate active labour market policies.

6. It is impossible for main contractors to have a subsidiary liability for sub-contractors. The introduction of such an obligation would have a negative impact on economic growth and, consequently, on employment.

7. Finally, concerning working time, CEEMET would like to reiterate the main points of its position paper of October 2005 on the proposed review of the Working Time Directive (annex I):

- The reference period for averaging the maximum weekly working time over 12 months should be the general rule.
- A retention of the individual "opt-out" provision is essential to ensure the flexibility that companies need particularly in times of global competition.
- Inactive on call time should not be considered as working time.
1. What would you consider to be the priorities for a meaningful labour law reform agenda?

In CEEMET’s opinion, the priority of a meaningful labour law agenda should be the “promotion of employment” rather than “job protection”. Therefore, labour law reform that looks to the future should target the removal of excessive job protection legislation so as to allow more flexibility for companies to adapt to changing market conditions while ensuring effective support and an active labour market for those facing unemployment. More flexibility in labour law would contribute to making the labour market more dynamic and thus to improving employment prospects.

In this context, reforms at European level should be based on a thorough examination of all existing directives related to working conditions in order to identify which of them hinder employment and then, if necessary, reviewing them. The electromagnetic fields directive (2004/40/EC) is an example of European regulation that CEEMET considers should be reviewed as it is impossible for it to be applied by companies.

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?

First, CEEMET would like to emphasize that collective bargaining has to be based on the principle of the autonomy of the social partners and will vary according to the industrial and employee relations history and culture of each Member State. It is for the social partners to decide on the adaptation of collective agreements, providing for any necessary flexibility measures. In this connection, we see a number of promising initiatives that have been taken by some national social partners at the appropriate level such as, for example, a collective agreement allowing the temporary exchange of workers between different companies as well as collective agreements providing opening clauses and derogations. But negotiated solutions can only be found within the limits defined by labour laws. Therefore, companies and social partners, at national, regional and company level, need labour laws to leave enough room for them to find tailor-made solutions.

With regard to labour law, CEEMET is of the opinion that changes are needed to improve flexibility which corresponds to the priorities identified above: less and better legislation. More flexibility in labour regulations, both at European and national level, would improve the competitiveness of European businesses, which is a precondition for maintaining and increasing employment. At both national and at the European level, labour laws which have hindering effects on employment should be systematically identified and reviewed.

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1 Directive 2004/40/EC of the European Parliament and of the Council of 29 April 2004 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields)

2 In most cases, the national member organisations of CEEMET are the recognized social partners in their countries. For many of them, collective bargaining is a core activity.
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 the national level is concerned, CEEMET is of the opinion that excessive and inappropriate regulations that restrict, for example, the opportunity to hire employees on an employment contract which meets the needs of the market and individual companies should be urgently reconsidered. The same applies to excessively burdensome and/or costly regulations on the, sometimes unavoidable, termination of employment contracts. Undue rigidities on this create obstacles for employers to hire new employees on a permanent basis (CEEMET members have gathered some examples of these which are listed in annex II).

Such regulations hinder enterprises from adjusting to market circumstances and to new technologies. At the same time, they represent a major obstacle for employees from taking advantage of possible different career opportunities. This conclusion was also drawn in the OECD Employment Outlook in 2004.

Flexibility is crucial for employers, particularly for SMEs and start-up companies. They both play a major role in the creation of employment. In the field of labour law, these companies and entrepreneurs need flexibility to adapt their labour force by, for example, changing their work organisation and adjusting their cost structure. They would also benefit from a simplification of regulatory and administrative procedures. As key drivers of the European economy, their requirements must be taken into account before presenting any new initiative. In CEEMET's view, start-up companies require extra flexibility that could be provided through easier opportunities for them to use fixed-term, temporary agency or part-time employment contracts during the initial phase (2 to 3 years) of their operation which is of crucial importance for the future of a business.

Furthermore, CEEMET would like to underline the importance of decentralised collective bargaining in boosting enterprises’ productivity and consequently the need for law reforms aimed at emphasising the important role of plant agreements.

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?

CEEMET feels that additional legislative instruments would be counterproductive. However, a revision and consolidation of relevant current national laws could be useful if this is aimed at identifying conditions which have negative effects on competitiveness and, as a result, on employment (please refer to the examples in annex II).

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3 Also often referred to in the Employment in Europe 2006 report of the European Commission.
4 This is recognized in the art. 137 of the Treaty stipulating that “directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.”
Since the competence for any such revision or consolidation lies with the Member States and the national social partners, the exchange of information on good examples, complementing those mentioned in the Green Paper, would be useful.

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?

Supporting employees in the process of their transition from one job to another is important for improving the flexibility of the labour market. Flexibility would not be seen in a negative way by workers if such transitions were not considered to be a crisis. In this context, CEEMET would like to refer to the results of a survey suggesting that protective labour legislation does not correspond with a high degree of perceived job security by employees.

Therefore, CEEMET is of the opinion that adaptable and more flexible employment protection should be combined with an adequate social protection system and active labour market policies. Depending on the situation in each country, this could require reforms of the tax and the social security system to give more incentives for individuals to remain in the labour market and to make work pay. Furthermore, additional efforts are necessary to improve the skill levels of employees according to labour market needs and to help them move to more demanding and higher value-added activities. This would help to make the need to change recognized and accepted by employees.

The often quoted example of the Danish “flexicurity” model cannot simply be transferred to other countries. Again, the competence lies with Member States to decide which measures are appropriate for them. At the European level, exchanges of information on good practices would appear to be useful and appropriate.

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?

CEEMET wishes to see all the relevant stakeholders encourage and invest in a commitment to lifelong learning. It is a dangerous fallacy to suppose that people who have successfully passed through school and/or vocational training or university have been equipped with the necessary knowledge and skills for their entire working life.

The identification and anticipation of skills needed in the labour market and appropriate information for the workforce are essential to optimize the choices of training and the transitions for employees as well as for companies.

On this subject, CEEMET and the European Metalworkers Federation have had some social dialogue discussions and have identified, on the basis of an exchange of good national practices, a number of issues in the field of education and training which are of great relevance.

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5 Employment Outlook 2004 – OECD
in trying to adapt training’s demand and supply: “image, motivation for training, anticipation of skills requirements, transparency of qualifications, new ways to deliver training and the responsibility for the funding of training”.

As low qualified people represent a high percentage of the unemployed and, especially, of the long term unemployed, it is clear that qualifications and training are important not only for companies but also for individuals.

For their part, employees need to increasingly recognise that ongoing training and learning is a key to achieving more secure and demanding jobs. For companies, investment in training is an important part of their strategy and should be seen as an investment to improve their competitiveness. Further training has an important contribution to make in improving the employability of individual workers, who should in their own interest also invest in their skills. Further training is a shared responsibility which could, for example, involve undertaking training outside of normal working hours. Promoting access to training will therefore go hand in hand with encouraging the motivation and willingness of workers to undergo training.

The adaptation of education and training systems to the evolution of the labour market is also a precondition for successful education/training in a fully active working life.

The appropriate answers to these questions, in particular in the field of education and training, can only be found by respecting the different national systems, taking into account in the first instance the needs of the market.

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?

In CEEMET’s view, there is no need for a “harmonized definition” of employment and self-employment at EU level. The approximation of labour laws at EU level would not help to find a solution in a “grey zone” where commercial law, social security and tax systems are also important. Furthermore, it would have a serious impact on national labour laws and social security systems.

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?

In view of the current level of rights in the field of working and employment conditions at EU level and in the 27 Member States either through law or collective agreements, CEEMET is convinced that a “floor of rights” is unnecessary and would be contrary to the principle of subsidiarity. As already explained earlier, it might also have negative effects on employment creation.
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 simply not realistic to make main contractors responsible for the activities of all their sub-contractors in the production chain. It would furthermore be neither efficient nor desirable to set up this subsidiary liability for sub-contractors. It would paralyse the economy and have a negative impact on employment because of the incalculable risks for which companies could be liable.

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

First of all, CEEMET would like to stress that companies need to use temporary agency work to be able to react in a flexible way to unforeseen market fluctuations. In many instances, agency work is also the deliberate choice of workers. Although increasing in number, the importance of temporary agency work is still relatively low in comparison with other forms of employment relationships. The role that temporary agency work can play as a step on the career path into other forms of work contracts or as a means to help the unemployed to return to the labour market often seems to be ignored.

CEEMET recognises the need to protect adequately temporary workers. Many different regulations for this already exist in EU Member States, generally providing appropriate protection for temporary workers. It is the opinion of CEEMET that, on this issue, the European level should respect the diversity of national situations as these are based on different traditions and cultures.

In several countries, this issue has recently been addressed by the social partners.

CEEMET would welcome an exchange of national experiences in this area at the European level.

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?

CEEMET would like to stress that there is already a range of national and European legislation in the area of protection of workers’ health and safety. Any new legislation should avoid introducing additional and unnecessary rigidities or administrative burdens. Again, this is particularly the case for SMEs and start-up companies. CEEMET is convinced that the reference period for averaging the maximum weekly working time over 12 months should be the general rule. The retention of the individual "opt-out" provision, probably in combination
with a “cooling off” period during which the worker may withdraw his/her agreement to the opt-out, is essential to ensure the flexibility that companies need for the management of working time. In most EU Member States, the level of admissible working time is relatively low on an international comparison. Therefore, tools for the intelligent use of this limited resource are becoming of increasing importance.

CEEMET would suggest that the review of the Working Time Directive should be sub-divided into two parts. First, a practical solution to the issues arising from the ECJ decisions on the SIMAP and Jäger cases has to be found. Second, the specific requirement in Art. 22 of the Directive for the Council to “re-examine the provisions of this paragraph” needs to be addressed.

It is important that the legal uncertainty which this long lasting political debate is creating for companies reaches a satisfactory conclusion.

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 employment rights of workers operating in a transnational context are ensured through a proper implementation of the directive 96/71/EC concerning the posting of workers.

CEEMET does not see any need for a more convergent definition of “worker” in EU Directives as this concept is appropriately defined by reference to “national employment law”. Therefore, CEEMET is of the opinion that Member States must retain their discretion on this matter.

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?

CEEMET believes that action should be taken, where necessary, to improve the monitoring and enforcement of current EU legislation. The reinforcement of administrative co-operation could be a way to achieve this. An efficient and effective administrative cooperation would also help companies to focus on their core business.

EU regulations should be implemented and enforced in a way that allows European companies to operate in a climate of predictability and stability. Adding new rules would not help improve the situation, when it is already difficult to find easily appropriate information on laws and collective agreements for all European countries. However, the strict application of the principles of better regulation would facilitate such administrative cooperation.

* In spite of the announcement of the former EU Commissioner, P. Flynn, concerning for example the setting up of a European database of all collective agreements in connection with the EU-Directive on Posting of Workers.
CEEMET would like to emphasize that national regulatory agencies, in clearly defined areas of competence, could help to improve the way in which rules are applied and enforced across the European Union. However, the enforcement of law does not belong to the field of social partners’ competences.

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

Combating undeclared work by preventing and sanctioning it is a priority in the framework of the proper implementation of European laws of which labour law is only one element.

CEEMET would like to point out that, often, too high levels of employment costs can be an explanation, though not a justification, for undeclared work, which represents a substantial “market” in Europe. Excessive labour costs can be a factor for choosing undeclared work for workers, employers or customers.

Further initiatives at EU level should aim at improving information on the negative consequences of undeclared work on, for example, social security systems and state finances, and exchanging good practices.

Concluding remarks

Labour law, the modernisation of which lies in the first instance in the competence of Member States, is a vital part of the framework for determining the environment in which companies operate. CEEMET members are convinced that, in the field of labour law, more flexibility will contribute to improving competitiveness and thus employment. In our view, all existing and forthcoming labour regulations at European and national level should always be checked against the principle of subsidiarity.

As the initiators of EU legislation, the key principles of subsidiarity and proportionality must be heeded by the European Commission as well as by national governments when implementing European legislation (avoiding “gold plating” of EU directives). CEEMET also believes that all EU legislation, particularly - for reasons of practicality – new legislation, should be subject to an effective impact assessment regarding the effect on competitiveness and employment of any proposal.

We also see no reason why automatic review mechanisms, for checking the effectiveness of the initiative after it has been in force for a few years, cannot be formally written into all EU legislation. In the area of labour law, we have the impression that, in cases where revisions of certain EU Directives are being considered, this is predominantly leading to the imposition of stricter rules and unfortunately not to creating greater labour market flexibility, let alone the total withdrawal of any legislation.

Brussels, 30 March 2007

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7 European Commission report on undeclared work in an enlarged Union (May 2004) and survey Schneider and Klinglmair “Shadow economies around the world: what do we know” (2004)
8 The results of a study conducted by the Institute of German economy and published in March 2007 show that 500000 undeclared jobs could become legal jobs if the level of bureaucracy in Germany was comparable to the level in the United-Kingdom.
CEEMET represents the interests of employers’ organisations in the metal, engineering and technology-based industries from 18 European countries with a particular focus on social policy issues. Furthermore, CEEMET has established and is developing a network of contacts with employers’ organisations in the new EU Member States. Our member organisations currently represent around 200,000 companies, employing some 12 million people.

The management of working time is a crucial factor in determining a company's competitiveness, impacting on the organisation and production processes of a company. At a time of increased pressure from the globalisation of economies and markets, cyclical changes and just-in-time production methods, working time needs to be managed in a way that can cope with these challenges both in terms of the number of hours worked and their flexible organisation. On the other hand, the flexibility / adaptability of working time also contributes to meeting the wishes and expectations of individual workers through, for example, the opportunity for enhanced earnings or helping to support the work-life balance requirements of individuals.

CEEMET would argue that a range of national and European legislation already protects the health and safety of workers to a high degree and that any new legislation should not introduce new rigidities or administrative burdens, especially for SMEs.

CEEMET has therefore followed with great interest the outcome of the European Parliament’s First Reading on the Commission’s initial proposal for revising the Working Time Directive and the Commission’s amended proposal that was published on 31st May 2005.

In this position paper, CEEMET is reiterating some of the comments that it made about the Commission’s 1st stage consultation on working time in March 2004 but it is also adding a number of remarks about some of the new issues that have been introduced by the Commission in its amended proposal. CEEMET is also suggesting a way in which it believes progress can be made in trying to resolve the differences that currently exist on amending this Directive both between individual Member States and between the Council and the European Parliament.

**Reference periods:** CEEMET remains convinced that the reference period for averaging the maximum weekly working time (Art. 6) over 12 months should be the general rule. In its 1st stage consultation document, the Commission seemed to support the finding that the 12 months’ reference period has now become a general pattern in collective agreements or other agreements derogating the Directive’s reference periods on the basis of Art. 17(4). The Commission also identified a tendency towards calculating working time as an annual figure, calculated over a reference period of 12 months. In addition, CEEMET considers that it should be possible, with the agreement of the social partners, for the reference period to be extended beyond 12 months.

As far as the reference period for the weekly rest period is concerned, CEEMET members believe that this should be extended from 7 to 14 days.

**Use of the individual opt-out:** The retention of the individual “opt-out” is essential to ensure the flexibility that companies need for the management of working time. Furthermore, the nature of many businesses is
such that workers know that overtime working is an integral feature of the industry and they actively join these businesses in that full knowledge, seeking the additional earning opportunities that this overtime working provides.

Therefore, CEEMET remains firmly of the view that the individual opt-out should continue to be part of the Directive and also considers that companies should be able to obtain these opt-outs by means of an individual agreement between the employer and the employee as well as by collective agreement.

In response to the Commission's concerns about some alleged abuses of the use of individual opt-outs, CEEMET considers that workers’ interests could be adequately protected by granting them the right to withdraw from their agreement. Moreover, any examination of the provisions of Art. 18 para.1.(b)(i) should not be based solely on the experience in the United Kingdom. As mentioned by the Commission in its 1st stage consultation document, several Member States have recently included the individual opt-out into their domestic legislation – mainly in response to the ECJ's decision in the SIMAP case - with the result that, for these countries, no reliable practical experience of the use of the individual opt-out is yet available. In our view, a comprehensive and detailed analysis of all Member States’ experiences of using the individual opt-out has still to be made, including taking into account the experience of the acceding countries.

**Definition of Working Time:** The Commission is correct in stating that the European Court’s case law (SIMAP; Jäger) is having a major impact on those Member States which do not define "time spent on call requiring physical presence at the workplace" as being working time and its implications go beyond the health sector. In most Member States, periods spent not working during on-call duty are excluded from working time and CEEMET supports this approach. It considers that there should be a distinction drawn between working time actually worked and periods of inactivity during time spent on-call with only time actually worked being considered as working time for the purpose of the Directive.

CEEMET also believes that the creation of a new category of "time at the disposal of the employer" is not necessarily the only or the best approach to adopt. In a horizontal Directive aimed at protecting the health and safety of workers, it is important to make it clear that rest periods should be considered as rest even if this rest occurs at the workplace.

**Reconciliation of work and family life:** Whilst acknowledging the increasing importance of this issue for both employers and workers, CEEMET is firmly of the view that it should not be addressed by this Directive which, as it is based on Art. 137, should only be concerned with protecting the health and safety of workers. Helping workers to reconcile the demands of work and family life is an issue that many CEEMET members are already addressing as an inevitable response to labour market pressures. In our view, it should be left for individual companies to identify the most appropriate ways of doing this in conjunction with workers and their representatives.

Therefore, CEEMET is opposed to the idea that is set out in the Commission’s amended proposal for revising this Directive that a new Article 2b on “compatibility between working and family life” should be introduced which would give all workers the “right” to "request changes to their working hours and patterns, and that employers are obliged to examine requests taking into account employers’ and workers’ needs for flexibility". This would impose an additional administrative burden on companies as they would be required to examine in detail all employee requests for changes to their working hours and patterns of work, taking into account the different requirements for flexibility of employers and workers which are often difficult to reconcile. This would inevitably involve a considerable amount of management time and make even more complex the day-to-day running of businesses at a time when they need to be concentrating on improving their competitiveness and identifying new products, methods of production and markets.

**Progressing amendments to the Directive**

CEEMET has noted the differences about amending the Working Time Directive that currently exist both between individual Member States and between the Council and the European Parliament. It is also aware of
the serious practical difficulties that the legal uncertainty arising from the ECJ decisions on the SIMAP and Jäger cases is now creating in an increasing number of Member States.

As a means of trying to resolve this legal uncertainty as quickly as possible, CEEMET would suggest that the review of the Working Time Directive should be sub-divided into two parts by, first, finding a practical resolution to the issues arising from the ECJ decisions on the SIMAP and Jäger cases and then addressing the specific requirement in Art. 22 of the Directive for the Council to “re-examine the provisions of this paragraph”. CEEMET considers that this approach would then allow these two very different sets of issues to be handled separately with we believe the legal uncertainty arising from these ECJ decisions being able to be resolved relatively quickly. This would then allow Member States the time to try separately to find a resolution to the differences between them on the other important, but less urgent, issues.
ANNEX II
Some concrete examples of flexibility needed or improved through laws and collective agreements

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<tr>
<th>Law/Collective agreement</th>
<th>Effect on competitiveness and employment</th>
<th>Country</th>
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<tr>
<td>Flexibility needed</td>
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<tr>
<td>Protection in cases of individual and collective dismissal of employees is too high</td>
<td>Administrative burden, cost and uncertainty linked with the procedure dissuade employers to hire on a standard basis.</td>
<td>Portugal, Germany, France, Spain, Italy</td>
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<tr>
<td>Discrimination in employment</td>
<td>Prevent companies from hiring new employees (bureaucracy linked with the burden of proof).</td>
<td>Germany</td>
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<tr>
<td>Transfer of undertaking</td>
<td>Leading to very burdensome bureaucracy especially for SMEs</td>
<td>Germany</td>
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<tr>
<td>Prolongation of fixed - term labour contracts</td>
<td>Limit the possibility for companies to hire on a fixed term basis employees who worked for a temporary work agency before.</td>
<td>Netherlands</td>
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<tr>
<td>Flexibility improved</td>
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<tr>
<td>Flexible employment contracts introduced by Biagi law</td>
<td>Flexibility introduced to meet companies and employees needs (more flexibility is still needed by companies)</td>
<td>Italy</td>
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<tr>
<td>Local collective agreement providing for the possibility to exchange employees between companies</td>
<td>Helping companies to quickly adapt to markets fluctuations</td>
<td>Germany</td>
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<tr>
<td>Opening clauses in collective agreements providing the possibility for companies to postpone the payment of bonus or to extend working time</td>
<td>Help companies to overcome temporary economical difficulties or to adapt to market fluctuations</td>
<td>Germany</td>
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