I – INTRODUCTION

The Union des Industries et Métiers de la Métallurgie is the French employers’ organisation of the metal, engineering and technology-based industries, with a particular focus on social policy issues. The UIMM gathers 45,000 companies which employ some 1,800,000 employees. Our organisation is an active member of CEEMET which regroups the employers’ organisations of the metal industry in Europe.

UIMM welcomes the debate launched by the Green Paper published on 22 November 2006 under the title « Modernising labour law to meet the challenges of the 21st century ». For UIMM, the main question raised by the Green Paper « how can labour law at EU and national level help the job market become more flexible while maximizing security for workers” is sensible and rightly formulated. For the French metal industry, it is indeed crucial to deal with the issue of « flexicurity » under the approach of « employee security » rather than of « employment security ».

However, conscious that the answer to this question can be manifold, we would like to call the attention of the Commission to the fact that new legal initiatives in the field of labour law could be at risk as they could create further constraints for companies. Indeed, we are of the opinion that the 14 questions raised in the Green Paper cover a wide range of issues, leaving the door open to many European initiatives. In the frame of this consultation, it is therefore important for the metal industry that the Commission starts with an evaluation of the impact of the existing directives on the functioning of the national labour markets. This evaluation should, then, allow determining the routes which could be proposed, following a step by step approach, to consolidate the European labour law.

In a context of globalisation, companies, more than ever, need to adapt themselves rapidly. Thus, too protective labour regulations are not adapted to their needs and become an obstacle to job creations. Flexible labour markets offer security to the workers and jobs opportunities for the unemployed while allowing companies to remain competitive.
II – DETAILED ANSWERS TO THE QUESTIONS RAISED BY THE GREEN PAPER

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

For UIMM, it is crucial to re-establish a balance between the capacity of companies to remain competitive and the necessary protection of employees. On the one hand, if the set of existing European directives in the field of labour law constitute a sufficient floor to ensure the protection of employees, on the other hand, this legislation does not allow, today, to ensure the competitiveness of European companies vis-à-vis their international competitors.

Consequently, before reflecting on any new legislative proposal in the field of European labour law, UIMM believes that the Commission should give priority to three types of actions: first, the control of the transposition and implementation of the existing rules; second, the evaluation of the directives in force and; third, the simplification, if necessary, of these texts.

Indeed, even if the majority of the Member States consider that they have correctly transposed the EU directives in their national legislation, the real implementation / application of these European rules varies considerably from one country to another, thereby creating distortions of competition between the different Member States, and thus between companies.

Furthermore, it seems urgent to systematically evaluate European directives before they are adopted, in order first, to assess the potential problems that the application of these texts could raise in national legislation and, second, to check that the European rules are always in line with the evolution of European labour markets.

In addition, in a number of cases, a simplification and/or a codification of the European texts should be envisaged taking into account the problems which occurred with regard to their application at national level.

Finally, it is imperative that the European labour laws should be as simple as possible, only establishing fundamental principles, with due respect to the industrial relations systems of each country, and thereby allowing companies to adapt themselves to the increasing international competition.

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?

For UIMM, the adaptation of labour law shall be undertaken via sectoral collective agreements at the level which is most suitable, whether it is national or European. If the European Union has the legitimacy to set up general principles in the field of labour law, in
order to ensure the protection of employees, it is also important to leave the necessary room of manoeuvre to the sectors to ensure the flexibility needed by companies to develop and thus increase employment. Without this flexibility, European companies cannot be competitive and thus cannot face the international challenges to which they are confronted. Ultimately, this situation negatively affects the level of employment in Europe.

Even an extremely protective labour law will never guarantee employment security if companies have to face legal and administrative constraints which deter their competitiveness. To the contrary, the adaptation of labour law requires the setting up of a flexible European legal framework, transposed at national level according to national procedures and practices.

Finally, in the frame of the adaptation of labour law, it is also crucial to take into account the role of the European Court of Justice (ECJ). Indeed, when interpreting social directives, the ECJ creates a new level of common law which comes in addition to the existing legislation and interferes with national jurisprudence and legislation. It would therefore be advisable to reduce the power of interpretation of the ECJ which, with its jurisprudence, creates a growing legal insecurity. In UIMM’s views, one should also consider a more precise drafting of European directives in order to limit the margin for interpretation of the ECJ.

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?

Before answering this question with details, the UIMM would like to insist on the absolute necessity to respect, in the field of labour law, the principle of subsidiarity at all levels, i.e. between the European and the national level, between the law and the collective agreement, and between the interprofessional and the sectoral level.

On the substance of the question, the UIMM believes that too much regulation is an obstacle to the economic adaptation of companies in an international context characterised by extreme competition. Furthermore, a too complex European labour law discourages foreign companies to set up subsidiaries and to invest in Europe. It is thus indispensable to give sectoral collective agreements and plant agreements the possibility to adapt European legislation in order to provide companies with the flexibility they need while ensuring the protection of the employees.

As regards SMEs which constitute the heart of the European industry, it is crucial to ensure that they are in a position to apply the rules which are imposed on them. Even if we do not envisage the creation of a two-speed labour law, it is urgent to adapt the legislation to their specific economic constraints and to make accessible the legislation they have to apply. We should thus aim at a simple and understandable labour law, protecting employees but respecting the right of entrepreneurship.
The development of SME is vital for Europe and the Commission can, therefore, not risk discouraging their development with excessive legislation. The European social legislation should thus be adapted to SMEs which represent 95% of European companies, and whose daily management problems, including in the field of employment, generally occur at local level.

Finally, the protection of employees and the freedom of entrepreneurship must both be taken into consideration before elaborating any new legislative proposal.

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?

A too rigid social legislation constitutes an obstacle to recruitment. It is therefore indispensable to simplify the rules on dismissals, with due consideration for the individuals. Long, complex and expensive dismissals rules and procedures deter companies to recruit employees with permanent contracts. Thus, the use of temporary work or of more flexible forms of contracts (fixed-term contracts etc.) allows companies to adjust themselves to the constraints of the market within which they operate. Flexibility is more than ever a necessity; the employment contract must reflect this reality.

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?

The current French system is based on a wrong philosophy according to which by hindering dismissals, and more particularly dismissals for economic reasons, employment is protected. However, the situation in countries with flexible labour rules shows the exact contrary. It is thus indispensable to ease the procedure rules on the breach of the employment contract. In parallel, while UIMM supports a policy of protection for the employees who have lost their jobs, we believe it is equally important to take more efficient measures to accompany these employees towards a new job. Measures to accompany the unemployed and to ensure the professional retraining of employees affected by restructuring are therefore necessary in a system which combines flexibility and security. Taking into consideration the major demographic challenges in all countries and the skills shortages faced by a number of industrial sectors, it is however as much important to take the necessary actions to avoid that the unemployed persons remain in the unemployment insurance system for too long. Degressive unemployment benefits combined with a strong obligation to look for another job are possible ways of ahead to solve this problem.

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?

In a global economy, companies are permanently confronted to the need for a well-managed adaptation of their economic environment. In this context, the collective agreement appears to us as a better adapted tool than the law to face these constraints.

The ever changing technologies and work organisations increasingly require the initiative and the competences of each employee: their aspirations and a better management of their occupational evolution require to renew the goals and the means of continuous vocational training.

Consequently, vocational training is a duty for all (employers and employees) and should be organised at the most appropriate level (sector or company) depending on the economic and technological context.

Moreover, in this context, employees competences tending to become rapidly out-dated, vertical mobility should be, as well as horizontal mobility, admitted and developed. Vertical mobility can be accompanied by incentives and training which could be foreseen by the sectoral collective agreements. However, for UIMM, it seems interesting to develop horizontal mobility which aims at extending occupational knowledge and know-how (foreign languages, quality etc.) in order to maintain the competitiveness of both companies and employees. More attention should be paid to this horizontal mobility which is much more demanding for the individuals in terms of competences’ acquisition. It is often indeed a real solution to manage both an occupational flexibility and greater security for the maintaining, the evolution or the access to a new job.

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 France, employment and self-employment are defined by law and by jurisprudence. However, it would be necessary to facilitate bona fide transitions from employment to self-employment, and vice-versa, as long as this decision results from a clear and unequivocal willingness of the employee (or the independent worker) without being imposed by the employer (or the client). It is thus necessary to clarify and to secure the frontiers between employment and self-employment; this should however not be done by the adoption of a further European legislation but by the clarification and the simplification of those national laws which are ambiguous.

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?
The term « form » of the contract is not appropriate since the « form » answers the question to know whether the contract is oral or written. It would be more appropriate to talk about the « type » or the « duration » of the contract. For the UIMM, the existing European directives in the social field constitute a solid basis for a « floor of rights » regarding the working conditions of all employees. An harmonisation of the rules applicable to the employees, whatever the type of their employment contract, could be desirable under the condition that those rules are flexible, adaptable and pre-determined (e.g. in terms of dismissals). This « floor of rights » could create a legal security both for the employer and the employee and consequently lead to more jobs, while reinforcing employees’ protection. However, the creation of such a « floor of rights » should be accompanied by the creation of a « floor of obligations » applicable to all employees, whatever the type of their employment contract.

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"?

This question is in reality three-fold and leads to a confusion between totally different legal situations. “Multiple employment relations” cover in principle the situation in which an employee has several employers at the same time (e.g. part-time employees working in several companies). The second question does not cover “multiple employment” but the situation in which the employee is employed by a sub-contractor. As regards the third question, it covers neither « multiple employment relations » nor « sub-contracting » but « three-way relationships » which essentially cover temporary work and the loan of workforce.

On the first question related to « multiple employment relations », and following strict legal definitions, the UIMM believes that it is not necessary to precise the responsibilities of the different parties since these employment relationships are quite marginal.

To the second question on the sub-contracting, we are of the opinion that it is neither efficient nor desirable to set up the subsidiary liability of sub-contractors; this would indeed paralyse the economy and force each company to integrate all its sub-contractors which we consider as a nonsense.

As regards three-way relationships, currently in France, the protection of employees is highly sufficient and it is thus not necessary to foresee new provisions to reinforce this protection.

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

In France, the employment status of temporary agency workers is perfectly clear and thus
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 French legislation on working time is fully in line with the provisions of the 1993 Directive on the organisation of working time, except as regards the jurisprudence of the ECJ in the Simap and Jaeger cases on on-call time, and more particularly for these on-call hours above 48 hours a week which the ECJ considers as contrary to the provisions of the above-mentioned directive. In the frame of the revision of the directive which is currently being discussed, it is therefore important to quickly clarify this last aspect. In this respect, one solution would be to split the text in order to solve separately the issue of the “opt-out” and of the “on-call time” which should not be considered as working time.

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 labour relation of frontier workers who are living in one country but working in a neighbouring state are subject to the national law and collective agreements of the country of employment. In the case of workers temporarily posted to another Member State, the posting of workers directive defines which matters are subject to the law or collectively agreed provisions of the host country and which issues remain subject to the laws of the country of origin. The UIMM sees no need for a more convergent definition of worker in EU directives and would strongly oppose moves seeking to indirectly harmonise existing national definitions.

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?

The UIMM supports an administrative cooperation between competent authorities in order to fight against the non-application of the European texts. However, we do not deem it desirable to develop the role of the social partners in this field.

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

The European social partners EUROPEBUSINESS/UEAPME, CEEP and ETUC have announced their intention to discuss the issue of undeclared work in the frame of their work programme 2006-2008. It would therefore be useful to wait for the results of their reflections before envisaging any European measure in this field.

III – CONCLUSIONS

For the UIMM, it is important to deal with the issue of « flexicurity » under the approach of « employee security » rather than of « employment security ». We are of the opinion that it would be interesting to consider measures which would combine a less restrictive legislation on the protection of employment, the development of occupational training and an unemployment insurance system sufficiently protective but accompanied by strict conditions.

The creation of such a system should, according to UIMM, respect two fundamental principles: the principle of subsidiarity and the emphasis on collective bargaining rather than on the law, collective agreements and/or plant agreements being social regulation tools which are more flexible and better adapted than legislation.

Paris, 19 February 2007