1. General

The Green Paper on labour law launches a necessary and valuable debate on challenges to labour legislation.

The stated purpose of the Green Paper, to launch a public debate on how labour law can evolve to support achieving sustainable growth with more and better jobs, is praiseworthy. Equally worth of praise is taking into consideration in this debate the challenges of the ageing population and social cohesion as well as the objectives of full employment and labour productivity. Europe must build on its strengths of innovation, education, equality and social cohesion, which in future will require increasing support. Nevertheless it seems that these strengths are alien to or at least largely ignored in the philosophy put forward in the Green Paper.

First of all it should be noted that the Green Paper is written in a particular way, channelling the debate towards certain conclusions. It presents the current deregulation of European labour market as a necessity by default, so that the only question to be discussed is how to relax the legislation to facilitate a further employment flexibilization. Social measures get much less attention.

However, the need for flexibilization of employment relations is not that evident. Neither it is clear from the Green Paper's preamble. For instance, why does globalization imply 'the shortening of the investment horizon' and 'the increasing demand shifts' which condition the need for flexibilization (European Commission 2006a: 5)? Conversely, globalization as a long-term world-wide trend should guarantee long perspectives and stable demand.

Or, is 'sustainable growth with more and better jobs' (European Commission 2006a: 3) really attainable due to flexibilization? In fact, sustainable growth means a non-inflationary development so much cared of by the European Central Bank. According to the Philips economic law of inflation–employment proportionality, a low inflation is attainable at the price of high unemployment. Then, if 'sustainable growth', where is the room for 'more and better jobs'? Isn't the flexibilization necessary for 'sustainable growth' just a substitute for latent unemployment and underpaid work?

Or, if the European Commission advocates for flexibilization, why doesn't it provide an example itself by moving its permanent full-time staff to flexible contracts? Following the Green Paper's logic, then it could better meet 'the challenge of adapting to change' by 'just-in-time management' and 'foster the creativity of the whole workforce' (European Commission 2006a: 5).

Back to reality, workers are always able to leave their jobs if they so desire. It is therefore quite irrational to suggest that reduced employment protection might improve the capacity of
workers to manage change; it would only facilitate dismissals by employers and help employers evade their social responsibility.

In brief a “hire and fire” or “deregulation” approach to flexibilization is short-sighted, dangerous and indefensible.

Therefore the current situation (in which a huge degree of precariousness already exists as well as illegalities resulting from the non-compliance with labour law) cannot be used to justify lesser legislative protection, as intended by the European Commission with this proposal.

It is necessary to examine in greater depth the causes of the current situation, to identify those responsible and to demand the implementation of the Universal Declaration of Human Rights, namely article 23 which states: “Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.”

And what about the Revised European Social Charter of the Council of Europe, which was adapted in Strasbourg on the 3 May 1996 and entered into force on 1 July 1999? Article 24 of this Charter calls for the protection of workers in case of dismissal, making sure no worker is subject to unlawful dismissal. In the Green Paper, this provision is called into question, namely through its mention of “flexicurity”.

The concept of flexicurity is crucial. The interplay between labour markets and welfare states should be at the core of the flexicurity strategy.

Meaningful questions are: Can interfaces between welfare states and labour markets be developed, where flexibility and security come together having “flexicurity” as the outcome? How can flexicurity develop within different national employment systems? Can the design and implementation of flexicurity arrangements be guided by a set of common principles on flexicurity.

As argued by the Social Platform, which represents social NGOs across Europe "the only open consultation that is presently taking place is on labour law, neglecting many other facets of flexicurity such as the need for solid social infrastructures, public support, supportive activation policies, minimum income or investment in life-long learning. (...) All citizens across Europe are concerned by the way member states are competing among themselves to attract investment by reducing taxes or putting pressure on workers’ rights. If the EU does not act on that it will never regain the confidence of people."

In literature the fundamental idea behind the concept of flexicurity is that flexibility and security are not contradictory to one another, but in many situations can mutually supportive. Flexibility is not the monopoly of the employers, just as security is not the monopoly of the employees. In modern labour markets, many employers are beginning to realise that they might have an interest in stable employment relations and in retaining employees who are loyal and well qualified. On their part, many employees have realised that to be able to adjust their work life to more individual preferences, they too have an interest in more flexible ways of organising work, e.g. to balance work and family life. So, the foundation is there for a new interaction between flexibility and security, which stresses the potential for win-win-outcomes in situations, which are traditionally conceived as characterised by conflicting interests.

Flexicurity should be conceived as a political strategy rather than as a state of affairs or an analytical tool. This is also the perspective taken by Wilthagen in his early definition of flexicurity (Wilthagen, 1998).

Following this observation, one may give a few thoughts to the question of what the differentia specifica should be for common principles related to a flexicurity strategy compared to principles or guidelines for political strategies in general. As suggested by the
Centre for Labour Market Research of the Aalborg University, here two observations can be made:

- Flexicurity policies will normally imply the integration of different policy areas, which call for increased emphasis on interactions between policy elements.
- Flexicurity policies will be exceedingly loaded with conflicting interests, since they will almost always imply winners and losers, especially in the short run, and therefore deliberations about compensating mechanisms.

Both these preconditions will influence the focus of the common principles that are outlined below.

Secondly, principles can be related to different aspects of a flexicurity strategy. Based on the standard concepts of policy analysis, one may distinguish between three aspects of a policy: 1) The policy context, 2) The political process and policy implementation and 3) Policy outcome. In case of political strategies aimed at creating some form of flexicurity arrangements, one can the assign one overarching principle to each of this three aspects and therefore at the most general level one can identify three common principles for all flexicurity arrangements:

When it comes to content of the policy in question, the basic criteria must be the principle of integrating flexibility and security. Policies will not fulfil this condition, if they solely imply changes in either some form of flexibility or security. At the core of the concept of flexicurity is the idea that some form of flexibility is combined with some form of security arrangement (safety net), which reduces the actual or potential costs either for employees or for employers of the flexibility in question.

Here the flexicurity aspect will imply demands on individuals or employers to adapt to changing situations and also, in a more proactive manner, to take more risks within a given environment. The safety net may be in the form of income security or one of the other forms of security spelled out above.

A second general standard for flexicurity is related to policy implementation and could be labelled the principle of negotiated trade-offs. In democratic societies, flexicurity arrangements will be designed, implemented and changed through a political process. Furthermore, one may— as stressed by Leschke et al (2006)— imagine situations, where no trade-offs are present, at least not in the longer run. Such flexicurity-arrangements can be conceived as plus-sum games with a positive net gain. But even plus-sum games may have some participants, who face the risk of not experiencing net gains—or who have to wait for their rewards until later periods.

Thus, moving from one configuration of levels of flexibility and security to another will involve that one of the parties (typically the employees) must accept some form of increased flexibility (and thus uncertainty) in their working life in order to get compensation in the form of improved security arrangements provided by the employers or the state. For this new situation to be sustainable calls for a high degree of legitimacy, which again must be based on some form of negotiated agreement between actors that have a mutual trust and share some form of common understanding.

Based on the flexicurity-literature one may finally point to a third general principle, which relates to the policy outcome with respect to forming the basis for sustainable employment both in general and with respect to the situation of weak groups on the labour market or in society as a whole. Such ideas are also inherent in all the examples of policy guidelines or assessments quoted in the previous section and lead to the inclusion of a principle of sustainable employment and social cohesion in the set of common principles, as they are defined at the most general level.

Based on these three general principles, one may at a lower level of abstraction identify a set of guidelines or a checklist, which could be applied is assessing the design and implementation of flexicurity arrangements within a specific context.
Thus, based on the principle of integrating the two elements in the flexicurity concept one can develop a set of guidelines which has the following main elements:

- Both the flexicurity and security elements of the flexicurity strategy must be well defined with respect to the concrete arrangements and the instruments involved.
- The interaction between the flexibility and the security elements must be unambiguous with respect to trade-off(s), positive interactions and vicious circles.
- The distributional aspects of the flexicurity strategy should be analysed.
  - Mechanisms of compensation for potential gains and losses for different groups must be included in the strategy.
  - Along similar veins one may develop the principle of negotiated trade-offs into a set of common guidelines for the political and social process that shapes the flexicurity arrangements:
    - All relevant stakeholders (including those at the local level) should take part in the process of decision making
    - The process must be transparent with respect to the distribution of gains and losses from the flexicurity strategy.
    - The political process should include political guarantees that ensure the implementation of the flexicurity strategy over time.
    - The flexicurity strategy should mobilize and link resources from different actors.

Finally, one may specify more detailed set of criteria for the outcome of the flexicurity strategy with respect to sustainable employment and integration of weaker groups:

- Ex-ante policy evaluations should be made, which uncover long-term and societal consequences of the flexicurity strategy as a whole, including its effect on institutional competitiveness.
- The flexicurity strategy should in the long run improve the employment options and the quality of employment for all groups on the labour market.
- The flexicurity strategy should have an advantageous effect the distribution of welfare and living conditions in general.
- The flexicurity strategy should empower weak groups to cope with their situation both as individuals and in cooperation with others.

Finally, at a third level, one can specify a set of principles in the form of good flexicurity practices with respect all three general principles.

A few examples could be:

- Income security can support labour mobility and structural change by increasing willingness to take risks and thus increase numerical flexibility.
- Employment security: Institutions for adult vocational training can provide skills that are transferable and improves both functional and numerical mobility.
- Combination security in the form of public child-care institutions and maternity leave can supporting mobility of women into work.
- Arrangements supporting the flexible retirement of older workers through part-time pensions and similar schemes may increase the integration of older workers on the labour market.
- Including social dialogue into the process of policy formation at local level will increase the willingness of workers to enter into flexicurity arrangements, which trades more flexibility of working time or pay for more job or employment security.
- Active labour market programs may support the (re)integration of long-term unemployed onto work and thus provide employment security for this group.
Questions

The key policy challenge – A flexible and inclusive labour market

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

We can notice that the Green Paper is mainly about labour law concerning the individual.

It is positive that the EU carries out a review of the legal framework for protection of the individual in the labour market. Yet it is important in this context to observe that the collective labour law is of essential importance when it comes to the possibilities of combining flexibility with security for workers. This can be clearly seen in the Nordic labour markets, where the role of social partners and the employers’ willingness to negotiate and cooperate are a prerequisite of an efficient labour market model.

Switching employment relations to an individual basis in a European context where 48% of insecure employment is based on non-standard contracts, of which over a third are part-time jobs where young people and women predominate, will not produce new jobs or increase pension provision for the future. Italy’s experience is instructive: here, the proliferation of statutory forms of non-standard and individual employment contracts has increased social insecurity, reduced incomes and diminished the younger generation’s prospects. Even the right of citizenship is under attack, as unequal opportunities exist for those condemned to temporary working throughout their lives compared to those enjoying the protection required for access to bank loans, housing and pensions. New proposals for legislation have been drawn up, therefore, to convert non-standard and supposedly temporary employment relationships into permanent contracts or provide statutory protection in the case of successive fixed-term contracts.

It should be emphasised at the outset that the task of labour law is to create minimum standards in order to protect employees. This should also be the guiding principle when modernising labour law.

Labour law shall support innovation, security and equality in particular. Competitiveness is enhanced by employment protection and the social responsibility of enterprises.

The EU must in future actively intervene in unhealthy competition based on working conditions that ignores occupational health and safety. The debate over maximum working periods in connection with the working time directive, for example, was indicative of some Member States attempting to seek competitive advantage from working time policies that sidestep labour protection.

The draft Constitutional Treaty champions the principle of a social market economy. Work is an integral part of human life, providing meaning, security, recognition and confidence.

The Kok Report of 2004 recommended a comprehensive strategy to improve the quality of work in comprehensive terms, and reaches the following conclusions: There is a highly-positive connection between quality of work and labour productivity. Workers’ willingness to work is contingent on their job satisfaction, and vice versa. This is good for workers, and it is good for companies’ competitiveness.

The Lisbon Strategy aims at creating more and better jobs.

Good work should be the focus of labour law reform.

GOOD WORK means:
- Fair wages.
- Safety, health protection and prevention measures at the workplace
- Workers' rights to assert their interests and to participate
- Family-friendly working arrangements and compatibility of working and private life ("work-life balance"),
- Working conditions promoting lifelong learning and possibilities of vocational further training, and
- Reliable, need-oriented systems of lifelong learning and an active labour market policy to support people in coping with rapid change, periods of unemployment and transitions to new employment
- Participation and co-determination in companies,
- In-company integration management (disability management).

Moreover, sustainable improvements in living and working conditions are contingent on a life-cycle approach that takes account of the interaction between work and private life. The discussion of "work-life balance" therefore aims at intelligently interlinking working and private life against the background of a dynamically changing sphere of work and life.

Business measures for a better work-life balance aim at allowing successful careers that take into account private, social, cultural and health requirements. A central aspect is the compatibility of family and work. Integrated work-life balance concepts include needs oriented working time models, tailored work organisation, workplace flexibilisation models such as tele-working and supportive and health-protective benefits for employees.

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?

The Government has an important role in enacting the fundamental laws in the field of labour legislation but the laws must be mainly formulated so as to serve as a basis. Where there is a need for adaptation to specific conditions, e.g. within different sectors, it must be possible to make such adaptations by means of negotiations and agreements between the social partners. Such a combined system is a powerful instrument in increasing flexibility and adaptation to sectoral and local conditions. However, this is based on the social partners’ willingness and ability to solve the problems – a fact that should be given special attention in the efforts to develop labour law at EU level.

The EU should encourage tripartite labour market regulation at the national and EU level. National collective bargaining and the regulation of working conditions through it should be encouraged in particular. However, a level playing field in national negotiations must be secured to ensure appropriate development in this area. General rules can be set by the laws and a necessary adaptation to specific situations in different sectors etc can be achieved by collective agreements. For collective agreements, the possibility to use semi-mandatory rules is a necessity.

By using minimum levels in EU directives, the situation in Member States without an adequate protection can be improved. In proposals for directives, the Commission should push for such a development but always in combination with the possibilities for better provisions nationally.

The right to engage in collective bargaining has been specifically safeguarded in international ILO conventions. The right to bargain also includes the right to strike.
The EU must ensure that the right to strike is safeguarded in all Member States.1 The precarious and intermittent nature of employment relationships is well described by the Commission, but there is no attempt to tackle the underlying issues. Free rein is given to firms with regard to flexible production and, on the other hand, individual states are required to provide statutory protection during periods of unemployment, while reducing safeguards and rights.

The approach should be to combat non-secure employment, which neither fosters economic development nor extends rights. The process of fragmentation and relocation of industry can be tackled by a new approach to contract working and the negotiating role of trade unions. It is only by means of collective agreements managed by the grass roots that it will be possible to overcome crises in manufacturing, whereas placing the enjoyment of safeguards and rights on an individual footing to “adapt” to globalisation will get us nowhere. The social partners play an important role here. They are responsible for many aspects of flexicurity. The social partners therefore bear a particular responsibility in this regard.

The Italian Piaggio case is a good example of how collective bargained avoided the risk of dismissals during seasonal decrease of production through a flexible working time arrangement (extension of working time during seasonal increase of production compensated by a reduction of working time in seasonal contraction of production). But alarms bells ring in Europe. The Vaxholm case, for example, directly challenges trade union collective bargaining rights. This particular case concerns the Latvian firm Laval which operated in Sweden using low-cost Latvian labour in contravention of Swedish law. Swedish workers took industrial action in protest, arguing that the company had breached Swedish laws under which pay and conditions are determined through collective agreements. The European Commission openly backs the Latvian firm’s social dumping and union-busting activities and claims that Swedish labour laws contravene article 49 of the EU treaties on free movement.

The Green Paper claims that ‘stringent employment protection tends to reduce the dynamism of the labour market’. It goes on to suggest that contractor obligations to monitor employment legislation among sub-contractors ‘may serve to restrain subcontracting by foreign firms and present an obstacle to the free provision of services in the internal market’. Such a course would allow the development of the single market unhindered by ‘traditional’ forms of trade union rights such as collective bargaining. This logic would institutionalise social dumping and drive down wages. Alarm bells should also be ringing following the launch of a joint British TUC/CBI campaign to encourage the adoption of ‘flexible working practices’. TUC general secretary Brendan Barber claimed that such practices would give employees ‘more choice’ and ‘people would get to see more of their friends and families’. A more sober assessment came from Amicus general secretary Derek Simpson who warned in the Times (22 January 2007) that ‘the Green Paper hides behind the language of equality to propose measures to force exploitation and insecurity on to every worker in Europe’.

1 At least with regard to the United Kingdom, it may well be questioned whether a genuine right to strike as guaranteed under international conventions is an actual reality there.
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 question assumes that adopting innovations may need firing employees with outdated skills, and that it can be too costly for small enterprises charged with severance payments. This gives employers a short-sighted incentive to dismiss those with "antiquated" training and replace them with younger recruits with more current education acquired through public funding.

However, it is not self-evident that innovations imply firing. In fact, innovations themselves result in higher competitiveness and, consequently, higher profits which should be sufficient to compensate expenses for professional training and/or creating a few jobs for new tasks. In fact, firms are seeking for double profits both from innovations and reducing labour costs. These double profits will unlikely be fairly distributed within the firms, but rather will increase the inequality between low- and high-paid personnel, contrary to the concept of welfare state.

The adaptability of skills is the key. Continuous training and retraining are essential: in 10 years' time 80% of the technology we operate today will be obsolete, and replaced by new, more advanced technologies. By that time, 80% of the workforce will be working on the basis of formal education and training more than 10 years' old.

Europe needs to develop a new architecture of lifelong education and training which involves not only all parts of education and training systems but also firms and individuals themselves. In addition, a culture of learning and training throughout working life needs to be fully embedded. It is hardly possible to overestimate the importance of action in this area, which has been the subject of a number of Commission initiatives.

Innovation policy requires a highly qualified manpower which requires long working experience, as opposed to short-time tenures under flexibilization. A loss of high quality of European products can be hardly compensated by their better quality-to-price ratio thanks to better firms' performance. Indeed, at the world market, the niche of highest quality-to-price ratio is already occupied by Asian firms, including Japan. The niche of cheap but still quality goods is occupied by the United States. Europe has traditionally manufactured highest quality products at high prices. If Europe quits its established niche, it will even more strongly compete with Asiatic and American firms with quite questionable outcomes, contrary to the Lisbon Agenda 2010.

National collective bargaining conventions support and may continue in future to lend significant support to enterprises and their ability to meet challenges. Productivity and competitiveness can best be improved through collective bargaining and supplementary local bargaining, in which enterprise size may be one of the factors taken into consideration. All enterprises must be equal in matters pertaining to working conditions. The rights and obligations of those working for SMEs must therefore be the same as of those working for larger enterprises.

The EU should encourage social partners to agree inter alia on matters relating to the training and working time arrangements of employees.

Europe has 72 million citizens who lack vocational qualifications. The problem of an ageing population is shared by all Member States. The appropriate response to these challenges as well as others lies in increased training and wellbeing at work. A statutory obligation to provide training to employees especially through continuing vocational education should be imposed on employers. A policy of "hire and fire" will
only lead to even greater alienation of those already at a disadvantage in the labour market.

Europe’s future and its success in global competition hinge on its focus on social wellbeing, equality, security and education as well as on successful management of the situation with the ageing population. The Green Paper fails to address these issues.

Lesser protection against dismissal attracts employers to dismiss employees with antiquated vocational skills and replace them with employees holding more recent qualifications.

The fourth European survey on working conditions carried out by the European Foundation for the Improvement of Living and Working Conditions thus reveals for instance that access to further training is highest among workers in permanent employment relationships (32%), whilst it is lowest for persons that are employed by temporary employment agencies or "without contracts" (18% and 11% respectively). There are also no signs whatsoever that regular permanent contracts will guarantee the best outline conditions in future in order to encourage motivation, further training, communication and participation in the enterprise.

Apart from social policy considerations, regular permanent contracts are therefore advantageous and of vital importance particularly for a European economy geared to sustainability and high human capital.

For example, the Commission’s Green Paper "Living and Working in the Information Society: People First" identified four crucial areas:

- Laying the best foundations: the foundations of our knowledge and skills are laid during the first years of education, and the education processes involved need to evolve with the development of new technology and with the new requirements for sustainable development.
- Teachers and trainers in particular must be targeted and the quality of their initial training and continuing professional development secured.
- From teaching to learning: education and training institutions must be swiftly reoriented so that learning institutions are much more responsive to changes in the skill needs of business and industry. One of the key objectives identified in the Commission’s White Paper "Teaching and Learning: Towards the Learning Society" was the need to bring schools and the business sector closer together to better complement each other as places of learning.
- The learning company requires that new forms of partnership between business, other organisations and educators are needed to ensure that the new and changing skills required are made available. The crux of this approach is continually to reinforce the employability of the workforce, as well as to increase the competence of managers and decision-takers through training.
- Lifelong learning for all: there is a strong need to transform passive labour market policies into active policies for human resource investment, in line with the agreement at the Florence Summit.

2 “Teaching and Learning: Towards the Learning Society” (December 1995)
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?

Studies have failed to give credence to the claim that reduced employment protection would increase the number of jobs available, or that greater employment protection would hinder job creation. It is nothing more than an argument. There is no evidence to prove the relationship between weak employment protection and number of jobs. National legislation poses no obstacle to recruitment under permanent contract. Reference should also be made to the importance of efficient control measures as well as related criteria and indicators. Checks should be made in individual cases on application as well as industry-wide (cf. for example call centres) to see whether supposed “new forms of employment” are not regular contracts of employment in accordance with the respective provisions on labour law and social security. In connection with this, equally important is also a legal stipulation that the content and actual performance of the work and not the external form of the contract are crucial to the assessment (assessment based on so-called “true economic earnings”).

The difficulty in designing new labour laws is just a low adaptability of dichotomous Yes/No logical schemata to favouring/constraining flexible employment with all imaginable intermediate forms. The legislative regulation would be much easier if the degree of employment flexibility could be evaluated for each particular case by certain rules and, eventually, implemented in an indicator of flexibility. Such an evaluation could be used as an eligibility criterion to social security benefits, like the personal/family situation is used as a tax liability criterion. Moreover, bridging legislation with taxation, one can introduce progressive flexibilization taxes instead of usual prohibition/authorization rules.

The Green Paper adduces three reference examples: ‘the Dutch Flexibility and Security Act 1999, the Austrian Severance Act (Abfertigungsrecht) 2002 and the June 2006 Spanish decree easing the conversion of temporary labour contracts into open-ended labour contracts with reduced dismissal costs’ (European Commission 2006a: 10). These reforms enhance labour market flexibility, in particular make dismissals easier, and at the same time provide some advantages for certain types of employees; see EIRO (2007) for details.

The Austrian Severance Act 2002 (Abfertigungsrecht) - an example of bridging legislation with taxation/insurance - recognized to be a good practice both by the European Commission (2006a: 10) and the OECD (2006: 99). The severance payment is accumulated throughout the whole career of employees at special severance accounts which are accessible upon dismissals or retirement. Employers make obligatory contributions to these accounts of 1.53% of salaries paid and are no longer charged with severance payments in case of dismissals. Since dismissals were relatively easy in Austria, severance pay was the major constraint, especially for small enterprises with tight budget. After the reform, dismissals became a quite formal procedure, and employers got freedom to make quick labour force adjustments for the flat 1.53%-‘flexibilization tax’. Regarded from the employees’ viewpoint, the Austrian Abfertigungsrecht is rather a kind of firing insurance. As argued by the European Commission (2006a: 10), its advantage is that a benevolent change of a job does not mean loosing the severance entitlement for a long tenure: "The new rules allow workers to leave when they find alternative employment rather than stay in a particular job for fear of losing the accompanying severance payment".
Certainly, it is questionable whether this factual flexibilization of employment relations with all the negative consequences already discussed — bad career prospects and complications of family life — is really compensated by no fear of losing a long-tenure severance award. The Austrian Severance Act has the weakness that it is case-independent and thereby does not constrain firings. The interests of employers are little affected by dismissals, because they are seldom charged with severance payments extra to the obligatory social contributions. Besides, all the increasing social expenditures for unfairly dismissed are carried by the statutory social security. A possible instrument to implement flexicurity with fewer disadvantages mentioned could be flexinsurance together with elements of the basic minimum income model. The flexinsurance assumes that the employer’s contribution to social security should be proportional to the flexibility of the contract/risk of becoming unemployed (Tangian 2005).

Modernising labour law

EMPLOYMENT TRANSITIONS

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?

Should a system be introduced that allows employers to dismiss at will while subject to no obligation to provide training, the position in the labour market of the ageing in particular will deteriorate even further. The ageing of the workforce is a problem faced by all Member States.

As already discussed, the EU must invest in education and a skilled labour force. Europe has 72 million adults with no vocational training and 19 million unemployed. Labour law should be developed towards imposing an obligation on employers to provide their employees with training. Employers should take particular responsibility for securing continuing vocational training. Society for its part should support this goal and ensure the adequacy of its educational systems.

There is no reason to weaken employment protection legislation in any respect. Support measures to the unemployed should be improved and made more effective. A well-designed, generally applicable unemployment insurance is a pre-requisite, both its active and passive parts. For an acceptance of a period of unemployment, a high unemployment benefit and a quick and easy way to find the next employment is an absolute necessity. Social partners should share the responsibility of monitoring abuse both from employers and from unemployed.

Improved support to the unemployed is not conditional upon reduced employment protection, as heightened support will be necessary in any event. Aspects requiring enhanced effectiveness include training (reliable, need-oriented systems of lifelong learning), validation of competence acquired in formal and informal learning and active job guidance.

These themes have been already explored and in fact the question is about the usefulness of passive and/or active security measures under a flexible employment protection legislation. Two measures are better than one, so a combination of several social security measures is more flexible itself and, consequently, provides more possibilities.
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?

The flexinsurance suggests, among other things, stimulating the upward mobility of employees, that is, transitions from part-time to full-time work, or from fixed term to permanent contracts. Professional training and transitions between different contractual forms can be negotiated by social partners to be accounted in the flexinsurance as bonus points.

The employability and career development of workers can best be supported by investment in training. Lifelong learning should be the object of development and support in the EU. Responsibility for training should be shared by both society and employers. See response to previous questions.

Legislation and collective agreements may and should be used as tools to support training both during and after the employment relationship. Particular attention should be paid to the opportunities of those employed under fixed-term or other non-standard employment contracts to take part in training. At present, those under non-standard contracts are often denied access to training provided by the employer and their position in the labour market is subject to constant deterioration.

A law allowing for educational leave is a first step. The remuneration during such a period, whether in law or in collective agreements, is a second step. Depending on the character of the training or education involved, the division of this remuneration between the employer, the employee and society should differ.

Tax credit for enterprise to support training is another hypothesis to be explored.

**UNCERTAINTY WITH REGARD TO THE LAW**

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*?

False self-employment and what is called economically dependent work constitute real problems.

The EU should put pressure on the Member States to initiate the national policies referred to in ILO Recommendation no. 198 adopted by all Member States. The purpose of the Recommendation is to establish and resolve problems relating to forms of work at the boundary of employment relationship, including economically dependent work.

The primary objective of this definition should be to avoid that economically dependent and subordinated persons lose the protection, normally awarded to an employee. Several factors have to be considered in order to find a complete assessment.

Therefore the definition cannot be once and for all exact. The definition used in social policy for cross-border worker mobility could be a starting-point for further discussions.

Anyway definition clarity alone can hardly facilitate mobility between employment and self-employment. Most important are the economical consequences linked to the definitions of employment and self-employment. Transitions from employment to self-
employment can be facilitated if self-employed have the same social security benefits as regular employees.
The objective of creating better jobs and increasing social cohesion laid out in the Green Paper's introduction calls for active and intense efforts to regulate instances of “false” self-employment.
Self employment is the issue as we are aware that self employment is a true option for true freelancer – usually with specific and higher level of expertise.

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 very idea of the 'floor of rights for working conditions' goes in line with the idea of minimal wage and, finally, with human rights in general.
The minimum conditions and security relating to work shall be safeguarded regardless of form of work contract.
The ILO Employment Relationship Recommendation (No.198, 2006) is the starting-point: namely to leave the nature and extent of protection given to workers in an employment relationship to be defined by national law and practice.
There is a floor of rights already decided by the EU decision-making bodies (Directives on fixed-term employments and part-time employments). There is also a “floor” on the global level. In the ILO convention number 158 on Termination of employment, which ought to be ratified by all Member States, it is stated that for a termination of an employment there has to be “a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service”.
The problem seems to be to have them fully implemented, applied and monitored.

**THREE WAY RELATIONSHIPS**

9. Do you think the responsibilities of the various parties within multiple employment relationships should be clarified to determine who is accountable for compliance with employment rights? Would subsidiary liability be an effective and feasible way to establish that responsibility in the case of sub-contractors? If not, do you see other ways to ensure adequate protection of workers in "three-way relationships"?

The principal contractor should have a liability for subcontractors. This is an effective and feasible way to establish the responsibility in the case of subcontractors. A directive leading to such a liability seems to be the most efficient way to eradicate many of the misuses of labour in today’s labour market. It does not only increase the protection according to social law and collective agreements but would also improve tax collection and environmental protection.
Temporary agency work is generally viewed as a step towards permanent and “traditional” employment. The EU shall use legislation and regulation to ensure that the transfer of temporary agency workers into the employ of the user undertaking is not restricted or prevented by

a) agreements between the temporary agency worker and his employer,
b) agreements between the temporary agency worker and the user undertaking, or
c) agreements between the temporary work agency and the user undertaking.

Practices placing an obligation on the user undertaking to compensate the temporary work agency in the event of the user undertaking recruiting a hired worker shall also be banned (recruitment fee prohibition).
Legislative means shall be employed to ensure that temporary agency workers also have access to training to maintain and enhance their skills provided by the temporary work agency and/or the user undertaking.

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

Again, the definition alone with no economic consequences makes not much sense. The social guarantees linked to this definition should be specified. It seems fair to compensate the inconveniences of agency work (frequent changes of workplace, adaptation efforts to new tasks and teams) by higher social guarantees.

ORGANISATION OF WORKING TIME

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?

In global competition Europe shall, taking into account working time protection, diversify the use of current working times, observe the personal needs of enterprises and employees and take into account the labour market based on higher levels of expertise.

The prosperity of the EU will also in future be based on innovation in the world of work, productivity and change management in the labour market. Related issues include wellbeing at work, preparing for an ageing workforce and the reconciliation of work and family life, which are all integrally linked to working times.

The EU shall introduce new initiatives and proposals contributing to evolution towards personalised working time arrangements. Working time today is too great a degree based on the outmoded concept of all personnel working at the same or nearly same time. The needs of individuals and enterprises may vary greatly and working time experiments of various kinds should therefore be supported. Studies have shown that working time autonomy cuts back on sick leaves, increases job satisfaction and also enhances productivity, to mention but a few of its benefits. Steps shall be taken towards introducing greater working time autonomy among employees. This involves working time arrangements that cater for the needs of employees and employers alike.

The balanced development of personalised working time requires a constant focus on working time protection and the subordinate position of employees in working relationships. The EU shall encourage national social partners to agree on arrangements that allow individuals to agree on working times at the level of place of employment whilst retaining the protection and security of employees.
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 EU must take steps to address the problems relating to various forms of work by promoting the implementation in Member States of the national policies and objectives included in ILO Recommendation no. 198, which was drafted with contributions from the governments of the EU Member States. Anyway the general rule must be that the most favourable condition for the employee should be applied. Finally, as provocative statement, we add that if the United States of Europe are on the agenda then a common definition of (transnational) worker with economical/social security consequences should be on the agenda as well.

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?

Administrative cooperation should run and improved and this concerns national as well as community law, but there is no urgency in an abrupt enforcing Community labour law as long as Member States have considerable national differences and specific traditions of industrial relations. Social partners play a pivotal role in monitoring employment conditions and should have the support of the EU in doing so. At the same time, the EU should support the protection of national collective agreements and prevent attempts to undermine employment conditions under the guise of e.g. the free mobility of services. The tricky question is surveillance. Rules without surveillance risk to become without any effect and, therefore, a greater emphasis has to be put on implementation and monitoring of the rules. Wages and working conditions are especially hard to supervise when there are cross-border activities involved. Therefore, the co-operation between authorities of course must be improved but each Member State must take the responsibility itself and have the possibility of choosing how this surveillance shall be carried out.

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 grey economy and undeclared work are a Community-wide problem that must be addressed with all means available. A close cooperation is needed between the competent authorities and the social partners.
Implementation of “client liability” would be the most effective tool in combating the
grey economy. The EU should seek to implement a system of client liability
throughout the Community.
Another fundamental problem is the wage differences between countries, so that an
undeclared work in Italy can be better paid than a declared work in Romania (even
taking account different living index). Therefore, measures against high
unemployment and wage differences can be even more efficient than legislation
prohibitions. It is important to guarantee a dividing line between worker and self-
employed that does not create any in-between solutions, which can develop into
“grey zones”. An unambiguous dividing-line is important not only for labour law but
also for the implementation of social and tax legislation.

Rome, 15 March 2007

Further Information:

Provincia di Roma
Gloria Malaspina
PROVINCIA DI ROMA
Assessore alle Politiche del Lavoro e della qualità della Vita
Mob.: +39.3400884264
E-mail: g.malapsina@provincia.roma.it

Dario Manna
PROVINCIA DI ROMA
Assessorato alle Politiche del Lavoro e della qualità della Vita
Tel.: +39.966766.7110 / 7384
Mob.: +39.3284911572
E-mail: d.manna@provincia.roma.it