EU Green Paper on Labour Law
Response from the Confederation of West Midlands Chambers of Commerce.

Introduction:
The Confederation of West Midlands Chambers of Commerce is pleased to respond to the consultation and discussion surrounding the EU Green Paper on Labour Law. The Confederation consists of all of the Chambers of Commerce within the West Midlands Region, which include:

- Birmingham Chamber of Commerce and Industry (which incorporates Solihull Chamber of Commerce and Industry)
- Black Country Chamber of Commerce and Industry
- Coventry and Warwickshire Chamber of Commerce and Industry
- Herefordshire and Worcester Chamber of Commerce and Industry
- North Staffordshire Chamber of Commerce and Industry
- Shropshire Chamber of Commerce and Industry
- South Staffordshire Chamber of Commerce and Industry

The Chambers of Commerce that comprise the Confederation represent over 13,000 businesses in the region as a whole, offering extensive services to industry and commerce, promoting trade and advocating the interests of business locally, nationally and internationally.

Response to questions raised by the Green Paper:

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

Businesses across the UK are already expressing concerns about the raft of employment legislation. Any laws that are introduced must be a clear advance from the existing legislation. They must reduce and simplify the work needed to administer a business and promote a clear and flexible vision for European labour relationships in the future.

It must recognise that increasingly our competition is not other nations within the EU, but nations with a less “comfortable” relationship with work and employment rights. It should also seek to simplify the bureaucracy of cross border working.

In areas of our economy that are declining, we need to understand that this change is part of a global process. Low-value manufacturing and assembly and similar low-value jobs in other sectors will increasingly go elsewhere. To succeed businesses needs to be able to access high quality employees and be allowed the freedom to make decisions based on their business needs. This flexibility will ensure that companies are able to expand their businesses and create a more stable long-term future for their employees.

Any new regime for regulating the business relationship between companies and employees therefore needs to ensure that the flexibility element of the proposed flexicurity model is the most important component. Businesses require flexibility in order to survive.

The second part of flexicurity, the need for security and a regulated, controlled labour market suggests that there EU jobs market is failing to live up to the promise of the Lisbon Agenda. It would
also suggest that the education system fails to produce employable people. The future for Europe should be to provide its citizens with the necessary skills and opportunities to ensure that there is no need for employees to languish in jobs where they feel abused.

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?

Collective agreements are largely irrelevant to the majority of UK companies. The mass of employers are too small to have taken part in union-brokered negotiations or in similar collective bargaining. Whilst there is some merit in this approach for larger companies, we do not feel that it would be beneficial for SME businesses to be forced to face an additional layer of bureaucracy.

As a group, we would not wish to see additional burdens placed on businesses, particularly small businesses. However, we recognise that many workers in semi-informal areas such as non-contract home-working schemes or in temporary positions may find their position far from ideal.

For businesses, the major reason for using these methods of employment is the inherent flexibility. There is little doubt that if these schemes were more heavily policed this avenue of employment would disappear for home workers and for some of the lower skilled employees in the formal temporary sector.

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 UK has a record of “Gold plating” EU regulations during the transposition process to UK law. It is not always easy for lay people to understand where the original EU regulation finishes and what has been added by the UK. We would therefore welcome the alignment of the EU and UK Regulatory Impact Assessments. This would lessen the impact of regulation should it be proved necessary.

Much current employment legislation creates an often destructive burden on business particularly SME’s. There is a genuine need to create labour markets that are more flexible to reduce the pressure on employers. Red tape including administrative, legislative and tax burdens only serve to promote a long hour’s culture, not to mention the impact on productivity, competitiveness and innovation.

The demands of modern business often require flexibility on the side of both employee and the employer. Businesses can only be expected to embrace flexibility in their working practices if it can be demonstrated to improve the overall business. Businesses should be encouraged to develop working practices that provide more flexibility to both employer and employee. This should be promoted in terms of the positive impact it can make on business (e.g. productivity). We would strongly resist any undue attempts at forcing these changes upon businesses. It should be recognised that in many cases, SME’s are simply not able to offer flexible working on a formal and sustainable basis.
SME businesses suffer from the greater emphasis on rights for employees. That is not to say that individual employees should not have these rights, or that businesses do not want to provide them. However, a successful, thriving business benefits both employer and employee, so businesses must have the right to make employment decisions based on what is genuinely best for their business, without fear of litigation.

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?

In our opinion, the current UK regulation on temporary contracts allows roughly equal rights at work, whilst acknowledging that the position is temporary. We would not wish to see a major change in this legislation.

It is our assertion that temporary workers are in many ways necessitated by the high costs and bureaucracy associated with the hiring of permanent staff. Given this, we would suggest that there must also be greater flexibility to differentiate wages for low-skilled jobs.

In the UK, the above inflation National Minimum Wage rises have had an adverse impact on wage differentials and this can cause wage stagnation. Paying lower skilled people lower wages should have two benefits. It will enable businesses to take on more staff and lessen the need for as many temporary contracts. It should also encourage the take up of training provision to improve skills and hence pay levels of individuals.

5. Would it be useful to consider a combination of more flexible employment protection legislation and a high level of assistance to the unemployed, both in the form of income compensation (i.e. passive labour market policies) and active labour market policies?

Our members believe that they need to be in control of their businesses, similarly employees want (and need) to be able to balance their work and home lives. The costs for businesses that do not meet these needs are striking. The cost of sickness absence alone is estimated to cost UK employers about £10 billion a year. In a recent survey over a fifth of senior women in UK organisations said they would change jobs for more flexible working arrangements. Typical recruitment costs of replacing an individual have been estimated at £4,000. Lloyds TSB, for example, estimates that it costs in the region of £50,000 to replace a senior woman manager. Given these costs, it is clearly not in the interests of any business that wishes to be successful to endanger the relationship with their employees as employees with desirable skills will simply leave the company to work elsewhere.

Businesses require the flexibility to ensure they can compete in global market places. This is true for businesses of all sizes and sectors, but is particularly important for SME’s. SME’s need to become more flexible in order to compete with fierce international competition from countries with lower tax bases, prices and labour costs, less regulation and skilled workforces. They certainly do not require more restraint on their operations.

It is notable that within the EU the nations with more flexible employment legislation have shown the best progress towards the targets of the Lisbon Agenda. Despite the progress of those with light
touch regulation, the European Union as a whole has lagged behind its competitors in terms of productivity. A move away from rigid employment legislation is likely to improve productivity growth.

Assistance to the unemployed is largely a matter for individual states. However, any such schemes to help individuals should focus on providing skills needed by the local business community. Training to improve skills should be targeted to areas of employment growth. We feel that focusing in this manner would be beneficial for both employers and potential employee as it should ensure that a long-term career is available. This should theoretically reduce existing and future pressures on the State.

We also need to tackle the problem of highly protective state benefit systems. The UK currently allows those in receipt of benefits to work up to 15 hours per week. This provides a barrier to work for those in receipt of benefit as it provides an artificial safety net preventing those who might be tempted back in to employment from taking work. This is in part due to the difficulty in regaining benefit if the employment is not suitable or otherwise fails.

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 UK has recently made efforts to improve the responsiveness of training schemes in the UK and to broaden their attractiveness to small employers. Measures such as Train to Gain, whilst welcome, need to be simplified and widened. It is in the interests of the Governments of EU nations to have educated and flexible employees forming their working age populations. Well-educated and flexible citizens are usually in more stable employment. Those with skills are less likely to become unemployed for the longer term. This impacts on Governments’ directly as it means less spending in benefits payments. It should also deliver a more consistent tax income.

The concept of job security itself is something of an oxymoron. It is not possible to create total job security in an entrepreneurial environment. Entrepreneurialism requires an element of risk and creating a risk-free society is not desirable or necessary. What needs to be developed is a quality service offering training that is valued by employers. If well qualified people are easy to find, then economic expansion will mean many more people are able to find work in the expanded job market that should result.

With the free movement of people, as advocated by the EU, the concept of a job for life is no longer realistic or indeed attractive for many employees. However, greater flexibility in labour laws is likely to lead to greater job creation, which will enable workers to move jobs easily and securely. This is what we feel the role of ‘flexicurity’ should be.

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?

We would welcome clarification, simplification and a common definition, particularly if the transition to self-employment (or vice-versa) were to be made across multiple EU states.
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?

We have no clear view from our members on the concept of a floor of rights. We would need to see further details of the proposal to see if it was in line with our members’ wishes. Some of the smaller self-employed business people amongst our membership may well welcome the ideal of protecting economically dependent self-employed workers. From the point of view of most businesses however, a floor of rights would not really ease the complications of dealing with multiple contracts and multiple benefit and remuneration levels, it would merely create an artificial floor and dependent on what is required to meet the level of the floor may raise the compliance costs for companies.

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”?

In the UK, the HMRC are beginning to work in the manner suggested with regard to the regulation of Construction Workers and their associated sub-contractors.

We also believe that the new Gangmaster licensing has a similar concept behind it. It has so far been in limited operation, but it does seem to have had some success in South Worcestershire amongst agricultural workers. We can see some benefits for smaller companies as nominally it should allow these businesses to share the responsibility for their compliance with employment legislation.

We have yet to investigate the full benefits and problems associated with these schemes. Their fundamental flaw faced by any scheme such as this is that it is not designed to fix problems and inequalities in the underlying laws. It merely attempts to alter the nature of the compliance.

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

In our opinion, the current UK regulation on temporary contracts allows roughly equal rights at work, whilst acknowledging that the position is temporary. We would not wish to see a major change in this legislation.

The flexibility that SMEs require is that which enables them to meet market demands and adjust their workforce and working practices accordingly. This includes flexible arrangements for working hours, part-time work, overtime and other types of employment contracts available. A flexible and open policy is most likely to ensure that work is available.

11. How could minimum requirements concerning the organisation 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 organisation of working time should be tackled as a matter of priority by the Community?

For many businesses, the retention of the opt-out is critical to their ability to remain competitive. This is particularly true of small businesses, where additional staffing costs would be prohibitive. The
Working Time Directive and its continual reforms are problematic to businesses throughout the UK. We would not be receptive to any additional legislation that increases in either time or financial costs the implementation of the directive. The continual changes to the working time directive have been a substantial cost to businesses that have been forced to adapt working practices and administration systems to meet the requirements of the Working Time Directive.

Simplification would be welcomed. At the very least, there needs to be a period of stability. We would suggest that the move to a longer reference period would be the most beneficial to business. This change would allow for semi-regular spikes in working hours. It is difficult for small businesses to remain competitive when the knowledge in a small team may be held in one or two people.

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 Confederation of West Midlands Chambers of Commerce has been active over the last few years in trying to shape the prospects for businesses operating in other EU states. We are committed to the principle that for businesses the legal framework for conducting the trade should be that of the home nation as long as there are no problems for health and safety or fair competition. The costs, particularly for small companies, in complying with multiple national regulations at present are unworkable.

However, we would genuinely welcome a flexible, business-friendly cross-border regulation that would allow companies to more easily manage employees and the self-employed across the EU.

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 2004 Kok Report recommended a comprehensive strategy to improve the quality of work and established a direct link between the quality of work and labour productivity. The major elements in this respect are Working conditions promoting lifelong learning and training, adequate income, social dialogue, safety, health protection and prevention measures at the workplace, balance between flexibility and security, compatibility of working and private life, and in-company integration management. We feel that the relevant authorities should be working together to promote these goals. The role for the business sector and its representatives as a social partner would be to work with governments to enable these to be achieved through a low regulation environment.

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

Illegal working is caused by two main problems. The high cost of employing someone (through taxation and labour law), and the willingness to avoid high taxes and often retain benefits on the part of the employee.
Whilst companies going to the effort and expense of operating legally would welcome a crackdown on those who cut corners and costs by not adhering to the same rules, they may well feel as though they are supporting a system that is making their life difficult and feel some sympathy for the aim of escaping the tax and regulatory burden.

Any short-term purge however is not likely to answer the problem. In the longer term, legal working needs to be made more attractive to truly stamp out illegal employment. Any measures to deal with undeclared work must not result in additional burdens for business and should be voluntary.

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