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?

The specificities of the so-called audiovisual sector and its various sub-sectors have been recognised by a number of European texts and by the social partners represented in the Social Dialogue Committee in the audiovisual sector in their Warsaw Declaration of 7 May 2006. Therefore these specificities should be taken into account when considering the legal definitions of employment and self-employment. In this perspective, flexibility should be respected in order to allow the audiovisual industry to continue creating jobs and fulfil the needs of both companies and workers.

The audiovisual sector and subsectors have the full range of contractual and working arrangements, which vary from one Member State to another. The various sectors are characterised by a wide range of employment relationships. Persons work in these sectors under various forms of contract. They work on permanent contracts or fixed term contracts and on a full-time, part-time or casual basis.

The definition of these terms is also linked to other fields of law such as taxation and social security.

A particular concern of employers in the sector is that the differences between the audiovisual sub-sectors in terms of employment working arrangements as well as the competences of the Member States need to be both understood and acknowledged. Consequently if there is a need for greater clarity in Members' States' legal definition of employment and self-employment and the differences between them, these clarifications need to give due respect to the Member States' competences.

Moreover, in the Commission's consideration of definitions of employment and self employment and in developing its policy thinking in labour reform more generally, we would ask that the Commission is sensitive to the distinctive and unique features of the film and TV sector. In this regard, there are two key distinctive features, which policy needs to address specifically for the audiovisual sector: first, the public interest across the EU in protecting media pluralism, cultural diversity, public service broadcasting and vibrancy of the audiovisual sector more generally and second, the unique need for flexibility when engaging cast and crew when making TV programmes and film.
A particular concern for trade unions in the sector is the perceived lack of inclusiveness of the concept of 'worker', in the context of a sector, which makes wide use of atypical workers such as freelances and the self-employed when engaging cast and crew. There is a consequent need, in the view of the trade unions, for new and more inclusive definitions of 'worker', while continuing to recognise the different contexts and traditions in the various Member States.

Owing to the complexity of these issues as well as of the sector and its sub-sectors, the Social Dialogue Committee in the audiovisual sector is unable at present to arrive at a joint substantive position in this area but recognises that further consideration of these issues may be beneficial at a future stage.

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 Social Dialogue Committee believes that the concept of a floor of rights, refers mainly to the standards of jobs. Thus, it is difficult to assess its direct impact on job creation. However, the role of collective bargaining in encouraging the transition between different forms of contracts should be promoted.

There are mature arrangements concerning rights, obligations and working agreements which have developed in the audiovisual sector and in sub-sectors across the Member States. The Committee believes that best practices should be identified and encouraged by the EU. However, the Committee, noting the different views set out in the response to Q7, believes that further consideration of these issues would be necessary before arriving at a more substantial common position.

The Committee wants to draw the attention to the fact that EU Directives concerning the labour market might result in unintended consequences when implemented in national law. The Committee appeals to the Commission to assess future initiatives in that respect.

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 Social Dialogue Committee recognizes that it is in the interests of all parties that everyone working within the Member States should respect, follow and be subject to the national legislation of that State, where applicable, and this includes the rights and obligations which apply to workers in the Member State in question.

There are forms of protection for workers within each Member State. The audiovisual sector, within its various components, is complex, and persons work in this sector under various forms of contracts. They work on permanent contracts or fixed-term contracts, and on a full-time, part-time or casual basis. What the audiovisual sector would find helpful from the EU is clarity on the differences in defining the term "worker" in the Member States.
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?

Moonlighting (i.e. undeclared work) or concealed work is objectively harmful to the European economy and needs to be combated, particularly against the backdrop of an enlarged Europe and increased mobility within the Union's borders.

The audiovisual sector and some of its sub-sectors are also, to a certain extent, exposed to this practice on account of the high degree of fragmentation within the industry and the extremely mobile character of productions and workers, including transnational mobility. Consequently, enhanced cooperation is required between the various European administrations, but there is also a need for teams of labour inspectors to be set up or strengthened. For the sake of efficiency, Member States should be in a position to ensure that undertakings operating transnational activities are duly registered, which requires close cooperation between national administrations.

The Social Dialogue Committee stresses Member States' responsibility for combating clandestine work. Notably through labour inspectorates, Member States are fully competent to deal with what is essentially a policing issue. Consequently, social partners should in no way be given legal responsibility for reporting on moonlighting or given the power to interfere with the activities of undertakings.

The Committee recalls the role played by the social partners in the fight against moonlighting, aimed at combating illegal practices, which result in distortion of the labour market.

The Committee considers that this issue, where appropriate, could be subject to bilateral discussions between the social partners, and not least in the framework of collective bargaining.

To the extent that appropriate tools have not already been established in the Member States and without prejudice to bilateral cooperation between the social partners, the setting-up in Member States of Moonlighting Commissions with the following tasks could be considered:

- assessing the impact of clandestine work on the industry with particular attention to transnational mobility;
- exchanging information;
- identifying sectoral hot spots which are particularly vulnerable, as well as the different forms of illegal work, and considering possible tools (including guides) to tackle this issue;
- creating appropriate statistics tools;
- raising awareness amongst stakeholders as well as the public authorities.

The Committee suggests that the creation of a European Observatory on Moonlighting might also be considered.