INTRODUCTORY REMARKS

Labour law issues are a core interest of the Church and her organisations. Through her pastoral care the Church promotes the importance of work and dignity of human being. She supports people affected by the sad experience of unemployment and the obstacles, such as age, lack of qualifications, sex or disability which prevent them from performing work they wish to engage in. Biblical and Christian anthropology conceive of work as an essential element of human existence and human self-realisation.

The Church and her organisations play an active role in community building and promoting the capacities of people for the common good of all in society to find their way to employment. They provide social services, vocational training and even facilitate active employment measures, e.g. for young people, people with disabilities or migrants.

In addition to that, in each of the Member States, notwithstanding the different Church – State relations, Church and religious organisations are substantial employers. They provide work for thousands of people. This makes the developments in the labour law agenda a point of direct interest for the Churches.

The importance of work for the existence and personal fulfilment of a human being has been reflected in many Church documents. The Church has presented perspectives on the social, ethical and anthropological aspects of work in view of the political, economic and technological evolutions of Europe. The Church does not claim an exclusive right to scientifically analyze what consequences these changes may have on society. But in response to her mission the Church feels responsible to call attention to the dignity and rights of those who work, to condemn situations in which the dignity and rights are violated, and to help to guide the changes so as to ensure authentic progress by man and society.¹

The Secretariat of COMECE welcomes the Green Paper “Modernising labour law to meet the challenges of the 21st century” and hereby would like to make an input to the EU-wide discussion on modernizing the labour law. The Secretariat has followed previous EU initiatives touching upon the social and demographical issues and has contributed to other consultations aimed at shaping the future regulations.

¹ See Pope John Paul II, Encyclical, Laborem exercens, no. 1.
We believe that the EU can make a significant contribution towards adaptation of the labour law so as to ensure that social values and principles are applied and decent working conditions do not become the exclusive right of only small group of people.

**KEY POLICY CHALLENGE – A FLEXIBLE AND INCLUSIVE LABOUR MARKET (question 1)**

The Green Paper rightly suggests that the priorities of the meaningful labour law reform agenda should be identified. It is possible to tackle the issue from diverse points of view: the workers’, the employers’, the authorities’ side, etc. Whichever perspective is chosen, it should be acknowledged that any economic and legal decisions aimed at the modernisation of the labour law should have a background in respect for human dignity and social justice and not merely in the rules of market economy. Social responsiveness should not be shadowed by the rigid rules of investment and enterprise development.

We would encourage the European Commission to adopt a multi-dimensional approach based on:

- labour law standards including the fundamental labour principles,
- social protection,
- mainstreaming the gender dimension,
- freely chosen employment.

The Secretariat of COMECE believes that among the priorities of the reform of the labour law the following aspects should be taken into account:

1. **Safeguarding the rights of those that require special protection**

   The contemporary labour market is driven by knowledge and skills, economic competition, flexibility and ability to change occupational qualifications. Building the capacities necessary to respond to these challenges pays back in a form of enhancing the welfare of the Europeans. However, not all benefit equally. Still quite a number of them is unable to take care of themselves or of their families or was not given proper education. Therefore particular attention should be directed to the people excluded from the benefits of the labour market and prosperity due to age, disability, reduced working abilities, struggling with unemployment, single parenthood, etc. It is important to develop formulas to bring these people back to the labour market and not make them dependant upon society.

   Worker's rights cannot be perceived only through economic perspectives guided by the criterion of maximum profit. The fundamental and appropriate criterion for shaping the economy, both on the micro and macro level, should be respect for the objective rights of workers. Workers are not a homogenous group. Their status and expectations vary from country to country. Therefore modernisation should be followed by developing adequate means of protection in case of loss of job and subsequently the provision of diverse systems of obtaining vocational qualifications, facilitating the search for new occupation. At the same time respect for certain cultural diversities due to different working arrangements existing in the Member States should be an element which requires the application of rules respecting differentiation.
2. Ensuring the equality between men and women

Women make up 52% of the European population. This percentage is not reflected as regards the access to, and participation in, the labour market. One of the results of the intensified global economic competition is the demand for an even more flexible and mobile labour force. Statistically this demand has a stronger impact on women than men and it submits women to social, employment and other forms of discrimination, such as the pay gap (which still exists between the two sexes, reaching on average 15% less earnings), risk of poverty and exploitation, fewer pension entitlements (due to their lower pay or shorter professional career, often interrupted by family obligations), and many others. Labour law modernisation should therefore envisage measures to eliminate gender stereotypes on the labour market.

It is equally important to underline that women should be guaranteed that they can perform their tasks in accordance with their own feminine nature. Women should be granted a choice whether they wish to stay at home and devote themselves to family responsibilities or to participate in the labour market, either on the basis of full or part time scheme. Equal treatment requires that any unfavourable treatment on account of pregnancy or motherhood is qualified as discrimination on the ground of sex. Health and safety at work must be particularly granted to pregnant workers, to workers who have recently given birth or are breastfeeding. Provisions guaranteeing of such health and safety should not disadvantage women on the labour market.

Reaching the Lisbon targets for female employment could be achieved through training and employment access policies, work-life balance policies, services, and the promotion of women's participation in decision-making. Member States should be strongly encouraged to advance and strengthen their national employment and social integration plans so as to include measures to help women enter the labour market on a footing of equal dignity and equal pay for equal work.

3. Facilitating reconciliation between family and professional life

The necessity to find adequate method to reconcile different types of working arrangements with family life has become one of the most important elements and urging issues of the EU’s social reality. Some further remarks on that subject can be found in the part of this response to the Green Paper devoted to the ‘Organisation of working time’.

UNCERTAINTY WITH REGARD TO THE LAW (questions 7-8)

The dichotomy presented in the introduction of the Green Paper dividing workers into insiders/outsiders appears to be too rigid and schematic. The concept of the outsiders or the excluded ones should be rather attributed to the individuals involved in social marginalization or to those deprived of jobs for a long period. But it should not be stretched to include these involved in atypical working arrangements, not protected by the traditional system of guarantees and presenting wide spectrum of internal differences.

The Secretariat of COMECE is convinced that there is a need for a “floor of rights” dealing with the working conditions of all workers. Minimum standards on EU level may contribute to a higher quality and better accessibility of jobs and a higher level of social security. At the same

3 “The true advancement of women requires that labour should be structured in such a way that women do not have to pay for their advancement by abandoning what is specific to them and at the expense of the family, in which women as mothers have an irreplaceable role” - Pope John Paul II, Encyclical, Laborum Exercens, no. 19.
time Member States’ competence to define the fundamental principles of their social security systems should be respected. Adapting labour law to meet the challenges of changing economy, it should not be forgotten that the centrepiece of the reforms should be the fight against poverty and social exclusion followed by combating informal economy, undeclared and illegal activities, including forced and child labour.

Ensuring the protection of workers, regardless of the form of their work arrangements, reflects the demands of social cohesion and respect for equality for all. The following elements should be taken into account:

- The obligation to provide unemployment benefits that is the duty to make suitable grants indispensable for the subsistence of unemployed workers and their families. It is a duty deriving from the fundamental principle of the moral order in this sphere, namely the principle of the common use of goods.

- The expenses involved in health care, especially in the case of accidents at work, demand that medical assistance should be available for all workers. At the same time Member States should be encouraged to provide better information and assistance on health and safety issues at work.

- Provision of pensions and social security entitlements should be guaranteed irrespective of the type of working contract. Pension schemes are a reflection of solidarity between the generations but they are also measures preventing discrimination against old workers. Attention should be also devoted to the working conditions of disabled people, to their just remuneration and the possibility of their promotion. Member States should prevent disabled people from being cut off from the labour market and ensure that they fully enjoy the working rights, according to their particular capacities.

- It is essential to underline that respect for fundamental rights should always be a reference point for designing the working arrangements. The protection of the special status of the Church and her ethos finds reflection in the freedom of thought, conscience and religion, guaranteed in Article 10 of the Charter of Fundamental Rights. In case of Churches and religious communities this freedom has been given a special protection under Article 4 of the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. According to this provision ‘...in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person’s religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person’s religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation’s ethos.’

While adapting the labour law one should keep in mind that a difference of treatment based on a person’s religion or belief shall not constitute discrimination. The Secretariat of COMECE finds it important to underline that respect for these provisions is maintained in the future legislative steps aimed at modernisation of the labour law.

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4 See also related Art. I-52 of the Treaty establishing a Constitution for Europe and Declaration 11 to the Treaty of Amsterdam.
THREE WAY RELATIONSHIPS (questions 9-10)

The issue of the multiple employment relationships has been already partially tackled by the EC legislation in the frames of the proposal for a Directive of the European Parliament and the Council on working conditions for temporary workers of 20.3.2002. Since the proposal for the Directive is still discussed in the Council we would ask the European Commission to clarify questions 9 and 10 in relation to this Directive.

However a few points deserve attention. The nature of the work performed by temporary agency workers varies between countries. Nevertheless, significant numbers of these workers are unhappy with their jobs and conditions. Many of them are forced to rather than choose this way of working, and would prefer secure employment. Compared to all other forms of employment, temporary agency work has also the worst record for working conditions.

Concerned with the some negative aspects of the formula of the temporary work the COMECE Secretariat would like to draw attention to the following inequalities faced by the temporary agency workers. Theses workers:
1. have less control over the sort of work they do and how they do it,
2. get less training,
3. have a higher rate of workplace accidents and are less well-informed about safety,
4. do more shift work and have less time to complete jobs,
5. have less job security,
6. have lower wages for similar work, are excluded from bonuses and benefits awarded to other employees.

We would encourage the European Commission to take into account these concerns as regards creating responsibilities of the various parties within multiple employment relationships and ensure adequate protections of these workers.

ORGANISATION OF WORKING TIME (question 11)

1. Reconciliation between private and professional life

In recent years Europe has undergone a transition from the industrial to the knowledge based society. Knowledge and education enabled people to have better job opportunities and better chances on the labour market.

However, if both men and women are to enjoy equal opportunities on the labour market in a highly developed knowledge society, there has to be a framework where they can both assume responsibility for raising children on an equal footing. Therefore the modifications of the organisation of working time are issues that should be addressed in parallel with the question of children and the family. Europe is facing a decrease in demographic growth and it becomes an urging necessity to find a formula of reconciliation between family and professional life.

The gravity of the issues related to this problem raised it to the top of the political agenda. It should be noted that the European Council in its conclusions of the March 2007 Summit stressed the ‘importance of “good work” and its underlying principles, i.e. workers’ rights and participation, equal opportunities, safety and health protection at work and a family-friendly organisation of work.’

5 As pointed by Mrs Ursula von der Leyen: German Federal Minister for Family Affairs, Senior Citizens, Women and Youth in her address to the MEPs on a meeting held on 23.01.2007 in the European Parliament in Brussels.
The idea of the ‘family-friendly organisation of work’ should be further developed and regarded as a priority. It is evident that modern labour law should offer more diverse possibilities of reconciliation, irrespective of the type of working arrangements.

Creating policies to reconcile family and working life is challenging, and also beneficial for the whole society. In order to promote integration and social cohesion, the EU should call upon the Member States to create appropriate conditions to give women and men equal opportunities to access to and remain in the labour market. To this aim, child care services and assistance to other dependants must be provided and family and professional burden-sharing must be encouraged. As for parental leave, the EU considers it as an individual and non-transferable right for male and female workers. Member States should therefore adopt necessary measures to protect the latter from redundancy due to exercising this right and ensure they can return to the same or equivalent post at the end of such period. The right to equal treatment (i.e. the absence of all discrimination on the ground of sex, by reference in particular to marital or family status) must be granted also to self-employed workers.6

An important gender aspect of the reconciliation issue has to be equally taken into account. In this regard the European Commission, in collaboration with the Member States and its social partners, should be encouraged to create such policies. A selection of such policies presented most recently in a European Parliament resolution of 13 March 2007 on a Roadmap for equality between women and men (2006-2010)7 should be fully supported. It will be beneficial not only for the quality time devoted to family obligations but it will contribute to increasing female employment, fairer pension schemes for the ones (predominantly women) performing unremunerated work at home.

Family is the foundation of society and therefore society should work efficiently to promote its welfare. However, the high mobility of work tends to increase the fear and uncertainty of the future which leads to complications in defining young people’s role in the society, especially as regards the formation of the family. It is therefore a special duty of the public authorities to recognise, protect and promote the authentic nature of the family, to favour the prosperity of home life and to work for the promotion of genuine and adequate family policies.8

Finally it should be underlined that despite lack of traditional legal safeguards the increasing number of workers wishes for prospects of atypical working contracts offering them possibility to reconcile work with other than family engagements. These engagements are of different nature. However, mostly they are orientated around social life and education. Taking into account different needs, more flexible organisation of working time should take into account issues concerning:

- different social activities
  The rigid working regulations often deprive workers of the possibility of engaging in social activities, mostly not remunerated, but beneficial for the whole society, such as charity, cultural or religious, etc. Advancing such activities contributes to strengthening the civil society and enables real empowerment of the citizens. The Church sees the pursuit of volunteer work, and involvement in clubs or institutions serving the public

8 Vatican Council’s Pastoral Constitution Gaudium et Spes, no. 52.2. See also Pope John Paul II in the Post-Synodal Apostolic Exhortation, Ecclesia in Europa, no. 91.
good, as an indispensable contribution to the vitality of civil society. But in order for voluntary activity to be possible, people need to be available at regular times and have a possibility of more flexible arrangements (e.g. as it is in case of the already existing arrangements designed for workers involved in the activities of the unions or political bodies).

- extended educational possibilities/vocational trainings
  Education in the knowledge economy makes a noticeable difference to employment prospects. The better educated the society is, the higher possibilities of handling unemployment or ensuring working mobility. Educational systems play crucial role in preparing young people to enter the labour market. At the same time the importance of life long learning must be underlined as it allows all people to obtain necessary skills in order to adapt to changing requirements of the labour market.

2. Rest from work

Another important aspect of improving the organisation of working time concerns the period of rest from work. This involves a regular weekly rest and also a longer period of rest (vacation) taken once a year or possibly in several shorter periods during the year.

The period of rest cannot be meant simply as a physical recovery of the working forces. An important aspect of the time of rest also consists of its social/collective dimension. In other words, it is not the same thing to enjoy a day of rest, when family and friends are engaged in study or work. For this reason, it should take necessary measures to safeguard the traditional Sunday rest, allowing of course for exceptions to the rule based on the specificity of certain jobs or public purposes.

Sunday as the weekly day of rest constitutes an irreplaceable contribution to the health and safety of workers, qua individuals and members of society. Sunday is the day on which every working citizen has a particular opportunity to rest, to relax with the family and with other members of society. The collective “rest from one’s labours” on Sunday is significant because it provides a time for all people to pause and to be compensated for the pressure of their weekday occupations. In the long term this improves the quality of their work. It also assists people in giving a certain regularity to their family life.

Although work is of fundamental importance to the fulfilment of the human being and to the development of society, in its ethical dimension Sunday rest allows people not to be enslaved by work claiming to find in it the ultimate and definitive meaning of life or to idolize it.9

Above all, protection of Sunday as a day of rest promotes the practice of religion as on this day Christian believers attend religious services. However, Sunday should not be seen merely in its religious context. Irrespective of this context Sunday as a day of rest is traditionally rooted in European historic, cultural and legal heritage. For this reason public services, administration, enterprises, etc. have adapted their working schemes to meet this phenomenon.

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ENFORCEMENT ISSUES AND UNDECLARED WORK (question 14)

There is a special need for further initiatives at EU level to support actions undertaken by the Member States to combat undeclared work. Three specific aspects concerning legal employment of foreign citizens should be recalled.

- The EU institutions concentrated mainly on the issues concerning the arrival and stay of the foreign nationals from the third countries and the EU Member States. The EU engaged into coordination of the control of the frontiers and the political aspects of migration, often undermining practical aspects of the employment prospects of the foreign nationals. In the absence of an EU immigration policy, many migrants have little choice; they often face exploitation and underemployment.

Fundamental rights of migrants and fair competition rules among low-skilled jobs need to be therefore properly addressed, especially that their legal status is still the subject of diverging national legislation. This leads to problems, among which trafficking and new forms of slavery are only the most dramatic. The EU Member States should agree on a coherent and transparent migration policy, which recognises the rights of migrants, e.g. such as the ratification of the 1990 UN Convention of the Rights of All Migrants and their families by EU Member States and the EU once it has gained legal personality.

It is unquestionable that migrant workers help to fill shortages of skills and are mainly complementary and not competitive to local labour force. Nevertheless, the high administrative requirements make it too difficult or impossible for foreign nationals to find legal/declared employment, even if they constitute part of legal immigration. Migrant workers are often forced to choose the non standard contracts, contracts limited in time; they are burdened with higher formal requirements, such as: unjustified limitation of recognition of the professional and educational qualifications or demand for elevated linguistic competences, etc. The valuable role of the EU in creating more flexible labour law could promote more effective implementation of antidiscrimination policies and provisions, such as reducing the bureaucratic difficulties, making the administrative procedures required for the recognition of professional titles more flexible, creating the formation and vocational centres, developing micro credits, etc.

People working in foreign countries, whether as permanent migrants or as seasonal workers, should not face disadvantages in the matter of their rights in comparison with the nationals. The value of work should be measured by the same standard and not according to the difference in nationality, religion or race. It is essential that the migration in search of work does not become an opportunity for financial or social exploitation.

Similarly, people of ethnic minority should not face discrimination in employment, both regarding access and promotion into higher and better-paid positions. The EU anti-discrimination directives are important tools, but due to the delays in their transposition by some member states their impact is still not sufficient.

- The specific aspect of undeclared work concerns female working arrangements, especially performed by migrant women. This particularly refers to work traditionally accorded to

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10 These remarks apply also to the question concerning the Mobility of Workers.
11 Pope John Paul II, Encyclical *Laborem exercens*, no. 23.
women, such as care for the elderly, sick and children or maintenance of houses. The EU should undertake actions to prevent marginalisation of women and create (and also support Member States in creating) programs guaranteeing equal access to labour markets, to permanent and better quality jobs. The EU should take practical steps to promote the emancipation and economic and social integration of migrant women, including in particular measures to foster language skills and understanding of the rights and duties applying in host countries, drawing up specific training policies in equal opportunities and programmes to combat discrimination in access to jobs and at work, support for immigrant women's business projects.

At the same time the EU and the Member States should develop programmes to combat sexual violence and the trafficking in human beings with a view to their sexual exploitation\textsuperscript{12}. This aspect constitutes a serious part of the underground labour market.

- Finally, it should be noted that the undeclared work is often a problem of these EU Member States which concluded Transitional Arrangements as regards the work performed by the nationals of the ‘new’ Member States. Although many Member States decided to switch to the full application of community rules on free movement of workers, others decided to carry on with transitional periods. Thus significant numbers of the EU citizens facing restrictions tend to become undeclared workers.

Therefore the EU should encourage Member States to grant easier access to these occupations where there is a need for additional workforce. Furthermore, instead of maintaining restrictive labour migration regimes, better monitoring systems should be put in place, such as tax, social security, professional qualifications or safety at work inspections. The principle of equal treatment and equal conditions of work should be enforced.

\textit{Brussels, 5 April 2007}

\textsuperscript{12} E.g. the EU should address the Member States which have not yet done so to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women, and Children, supplementing the UN Convention against Transnational Organized Crime (one of the "Palermo Protocols"), and the Council of Europe's Convention on Action against Trafficking in Human Beings and to implement Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.