RESPONSE TO THE GREEN PAPER

“too much flexibility can destroy long-term productivity”

Juan Somavia, Director-General, ILO, November, 2006

The International Centre For Trade Union Rights
ICTUR was established in 1987, and has its international headquarters and international secretariat in London. There are established national committees and correspondents covering Europe, Africa, Asia, America, and Australasia. In 1993 ICTUR was recognised as an important international organisation and was granted accredited status with both the United Nations and the International Labour Organisation (ILO).

The objects of ICTUR include the defence of trade unions and the rights of trade unionists, and in that context to increase awareness of trade union rights and their violation. In performing these functions, ICTUR carries out its activities in the spirit of the United Nations Charter, the Universal Declaration of Human Rights, International Labour Organisation Conventions and Recommendations, and other appropriate international treaties. ICTUR works closely with other non-governmental organisations (NGOs) in the defence of human rights.

ICTUR works at several levels in the defence of trade union rights: international, regional and national. The Committee plays an important role in defending and advancing the rights of trade unionists, not only in the UK but also in the European region, together with its sister committee, the Irish Committee of ICTUR, and the networks of correspondents and supporters across Europe who maintain regular contact with the ICTUR international office in London.

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Hassan Sunmonu, General Secretary, Organisation for African Trade Union Unity

International Centre for Trade Union Rights (‘ICTUR’),
177 Abbeville Road, London, SW4 9RL, UK,
tel: +44 (0)20 7498 4700, fax: +44 (0)20 7498 0611,
website: www.ictur.org, email: ictur@ictur.org

1 Inter-alia, there are regular ICTUR correspondents (and typically several correspondents in each country) in: Bulgaria, Hungary, Belgium, Sweden, Finland, Spain, France, Czech Republic, Lithuania, Germany, Netherlands, Italy, Malta, as well as in non-EU European states including Norway and Switzerland.
ICTUR makes this submission to assist the EU Commission in its efforts to plan an appropriate future strategy for the development of labour law in Europe.

The International Context
In the review of any proposed future direction for labour law it is important to have regard to the international context in which industrial relations law operates. Nowhere is this context more relevant than at the level of regional regulation of labour law. There are international standards which regulate the way in which national governments must approach the question of workplace relations. These are binding international instruments to which, in the case of the ILO conventions on trade union rights and collective bargaining (for example), all EU Member States are signatories. Any regulation of labour law at the European regional level must recognise, protect and promote also the obligations which Member States have accepted under international law.

The ILO
One of the most important sources of international law in the field of industrial or workplace relations is the International Labour Organisation (ILO) which was founded in 1919. The ILO operates on the basis of a tripartite structure where representatives of workers and employers enjoy equal status with those of governments and where ILO standards are adopted with the support of unions, governments and employer representatives.

The ILO has produced a large number of conventions and recommendations: together these constitute a comprehensive international labour code. All EU Member States are members of the ILO. All EU Member States have ratified the Freedom of Association and the Right to Organise Convention 87 and the Right to Organise and Collective Bargaining Convention 98.

In addition, respect for the principle of freedom of association is regarded as so important to the operation of the ILO that the obligation to do so is regarded as inherent in the fact of membership of the Organisation.

The importance of Conventions 87 and 98 is reinforced by the ILO Declaration on Fundamental Principles and Rights at Work which was adopted at the International Labour Conference in 1998. This declares forcefully that:

... all Members [of the ILO], even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organisation, to respect, to promote and to realise, in good faith, the principles which are the subject of those Conventions, namely:
(a) freedom of association and the effective recognition of the right to collective bargaining;
(b) the elimination of all forms of forced or compulsory labour;
(c) the effective abolition of child labour; and
(d) the elimination of discrimination in respect of employment and occupation.

The pre-eminence of the ILO instruments in the field of labour law is widely recognised by other international treaties. In particular this extends to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). For example, Article 22(3) of the ICCPR provides that nothing in this article shall authorize States Parties to ILO Convention 87 to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention. Such concern to ensure that the legislative provisions of the ILO instruments retain their place at the centre of labour
law has also manifested itself in the development of regional labour law, notably the Council of Europe’s Social Charter of 1961, which was drafted with ILO assistance.

**EU Member States and the ILO**

It is difficult to exaggerate the importance of Conventions 87 and 98 or the reasons why they should be fully promoted by the EU. So far as the former is concerned, we indicated that Conventions 87 and 98 and the principles which they embrace are regarded as two of the most important of all the ILO human rights instruments. Freedom of association and the right of collective bargaining are regarded internationally as among a select cluster of “core” labour standards that are prior to all other standards. These core standards form a subset of human rights as defined in the various instruments that make up the International Bill of Human Rights. The principle of freedom of association and the right of collective bargaining are derived from the ILO Constitution (and the Declaration of Philadelphia annexed to the Constitution), from Conventions 87 and 98 respectively, and from the Declaration on Fundamental Principles and Rights at Work of 1998. As we indicated previously, all EU Member States have - voluntarily - accepted all three of these obligations, and may be regarded as bound three times over to accept these principles.

Apart from the fact that these are obligations voluntarily assumed, there are other reasons why the EU should be seen fully to promote the international obligations of its member states. The EU and its Member States play an important part in the community of nations. As such it is important that the EU demonstrates leadership in the observance and application of international human rights instruments. If Europe can fail in its international obligations, why should other countries not do the same? By what moral authority can the EU and other developed countries complain and criticise others for their failure to comply with international standards?

Leadership in the field of international human rights has many dimensions. But it is the obligation of good international citizenship to lead by example. This includes a willingness to ratify and accept international human rights instruments, and a willingness also to implement them fully and effectively; there is no room for selective application or enforcement. Leadership also implies an obligation to lead by persuasion and pressure, to use diplomatic and economic opportunities to enhance the global commitment to human rights instruments: this is a role which can be performed only by those countries which themselves comply with their obligations. And leadership also implies a willingness to lead with others, to enable others - such as NGOs and trade unions - to work towards the promotion of human rights standards throughout the world.

However, it is essential that the EU and its Member States remain vigilant against falling into the comfortable but mistaken assumption that conditions of compliance with international human rights law in the field of labour relations in Europe has already been met. It has not. The problems identified below demonstrate the extent to which failures to comply with international human rights standards continue in the EU.

ICTUR will argue that the action required to ensure compliance with the minimum standards required by the ILO is nothing short of a re-orientation of EU legislative proposals towards greater emphasis on the promotion of the collective labour rights that form the core of the ILO’s Declaration of Fundamental Principles.

**Particular problems with freedom of association in EU Member States**

In several EU Member States national law and practice is failing to fully implement international legal obligations adopted by the Member States when they ratified ILO Conventions 87 and 98.

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In **Bulgaria** the right to strike is restricted for civil servants and for workers in essential services (with the latter defined more widely than those industries which may be considered to be essential services according to the ILO). Unions have reported ‘frequent’ harassment and discrimination. The ICFTU in its last Survey of Violations of Trade Union Rights reported that ‘temporary contracts are increasingly being used to prevent workers from claiming their rights’. The most recent report of the ILO Committee of Experts on the Application of Conventions and Recommendations called for action by the Government:

> “the Committee expresses the firm hope that the Government will be in a position to indicate in its next report any measures adopted to guarantee effectively the right to strike of all civil servants”.

In **the Czech Republic** bribes, pressure and dismissals against trade unionists are common occurrences. The most recent report of the ILO Committee of Experts on the Application of Conventions and Recommendations called for action by the Government:

> “The Committee requests the Government to indicate in its next report any observed improvements in the protection afforded against acts of anti-union discrimination and interference in practice”.

In **Estonia** the ICFTU in its last Survey of Violations of Trade Union Rights reported that harassment of trade unionists is ‘rife’ in the private sector.

In **Germany** there is a denial of the right to strike for all civil servants and public sector workers, including teachers. Teachers are also denied the right to collective bargaining. The most recent report of the ILO Committee of Experts on the Application of Conventions and Recommendations called for action by the Government:

> “The Committee has been requesting for a number of years the adoption of measures so as to recognise the right of public servants…to have recourse to strike action”.

In **Hungary** there are continuing problems of threats, dismissals and harassment against unionists. The most recent report of the ILO Committee of Experts on the Application of Conventions and Recommendations called for action by the Government:

> “The Committee requests once again the Government to indicate in its next report any measures taken or contemplated so as to adopt specific legislative provisions prohibiting acts of interference…and establishing rapid appeal processes, coupled with effective and dissuasive sanctions against such acts”.

In **Latvia** firefighters employed as civil servants (rather than those employed as employees) are legally excluded from participation in collective bargaining. The most recent report of the ILO Committee of Experts on the Application of Conventions and Recommendations called for action by the Government:

> “The Committee recalls that…lifesaving service employees and fire-fighting employees, considered by national legislation to be civil servants, should enjoy the guarantees of the Convention and should be able to negotiate collectively the conditions of their employment. The Committee requests the Government to take the necessary measures in order to ensure the application of this principle in the legislation”.

In **Lithuania** the ICFTU Survey argued that the use of fixed term contracts and expansion of the informal economy are making union organising very difficult. ICFTU also noted that the fixed term contracts of some union members in large retail stores were not
renewed on expiry, but that no employer has yet to face the penal sanctions for anti-union discrimination.

In Malta the government used legislation to impose working arrangements around holidays in breach of an agreement with the unions. The unions have been sued under civil law for damages resulting from their participation in strike action.

In Poland the ICFTU Survey reports that the law is ineffective in preventing anti-union dismissals and harassment. Large numbers of workers have been dismissed and re-hired on individual contracts. ICFTU regards this process as a union busting exercise. Other dismissed workers have been forced into the informal economy where they are not allowed to unionise. In the transport and construction sectors large numbers of workers have been sacked and then re-hired as individual contractors. This sham arrangement is used to bypass laws that protect union rights and to avoid collective bargaining.

In the UK, sympathy strikes and secondary picketing are not protected by the law. Small firms are excluded from the statutory bargaining regime. Legislation restricts unions’ right to discipline members. Hundreds of workers were dismissed from airline catering company Gate Gourmet after claiming that a workplace meeting called in response to employer constituted unlawful industrial action. A worker from BA was dismissed for organising a sympathy strike. The 2005 report of the ILO Committee of Experts on the Application of Conventions and Recommendations called for action by the Government:

“Recalling once again that unions should have the right to draw up their rules without interference from public authorities and should be able to determine whether or not it should be possible to discipline members who refuse to comply with democratic decisions to take industrial action, the Committee requests the Government to continue to keep it informed in its future reports of any further developments concerning sections 64-67 of the TULRA so as to more fully ensure the rights of unions to draw up their rules and formulate their programmes without government interference”.

And:

“The Committee once again recalls that workers should be able to participate in sympathy strikes, provided the initial strike they are supporting is lawful, and to take industrial action in relation to matters which affect them even though the direct employer may not be a party to the dispute, and requests the Government to continue to keep it informed in its future reports of developments in this respect”.

**The Green Paper: out of step with global opinion**

It is against this background of continuing failure to respect the most fundamental conventions of the ILO - the conventions on freedom of association and collective bargaining - that ICTUR feels compelled to set out its responses to the EU Green Paper in the form not only of a series of answers to the specific questions raised by the Paper, but also in the form of a challenge to some of the fundamental assumptions that the Paper promotes.

ICTUR asserts that a reform of individual labour law around the contract of employment and changes that promote more flexible working will be neither sufficient to address the problems faced by Europe’s workers nor to put Europe on track towards securing the Decent Work agenda that now forms a major policy objective of the ILO (and which has also been endorsed by the EU).

In his address to the founding conference of the International Trade Union Confederation, ILO Director General Juan Somavia emphasised the international consensus that now exists around the promotion of “Decent Work”.

In the same speech, the Director-General argued that “too much flexibility can destroy long-term productivity”. ICTUR believes that the words of the Director-General of the ILO should give the EU Commission serious pause for thought in relation to the direction of reform proposed in the current Green Paper.

“Hitting the right balance”, the Director-General told his audience, “requires a sound platform of labour laws, dialogue and collective bargaining between trade unions and employers and their organizations on employment relations”. “In many cases”, he continued, “the best way forward may be at the sector level”. And this, he concluded, would entail “a big role for global unions”.

In fact, the global agency that draws upon the expertise and experience of governments, employers and workers around the world is currently focused upon policies that are:

- cautious of ‘too much flexibility’;
- committed to Decent Work rather than simple job creation;
- inclusive of the trade union role as a key negotiating partner at the sector level;
- committed to the human rights approach adopted by the Declaration of Fundamental Principles around freedom of association and collective bargaining.

The discord with the EU Green Paper is clear. The Green Paper proposes a model that is:

- overly concerned with ‘flexibility’;
- concerned with ‘job creation’ without sufficient attention given to Decent Work;
- largely disregards the trade union role (to quote from the Green Paper ‘the focus is on the personal scope of labour law rather than on issues of collective labour law’);
- Does not address the human rights implications of its proposals.

ICTUR challenges the Green Paper’s authors to re-assess the Paper’s focus on flexible working in the light of the above.

**Questions posed by the Green Paper: ICTUR’s response**

Although concerned primarily with its call for a refocusing of the Green Paper’s approach towards labour law reform, ICTUR recognizes also the assistance that it can offer to the Commission in terms of responding to the specific questions raised by the Paper.

We therefore set out our responses as follows.

**Questions**

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

   - The goal of Decent Work to be celebrated as a major policy goal AND for this to be properly reflected in a re-draft of the Green Paper on the future of labour law;
   - The adoption of strategies to ensure full compliance with the ILO’s core labour standards throughout the EU (ie – within the Member States rather than as tools for the development of foreign aid and trade policy as seems to be the role for core labour standards as presently conceived by the EU).
   - The recognition that full compliance with ILO core labour standards is a non-negotiable legal requirement that forms a fundamental plank of international human rights law.
- Strategies to promote stability in employment, encouraging employers to take a longer term approach to planning and to invest more in workers’ training and development.
- Promotion of rights for time-off to access education and training for all workers as a strategy to boost workforce skills, work-life balance, productivity and economic efficiency.
- Promotion of family-friendly working arrangements and rights for workers, through their trade unions, to negotiate arrangements for greater life-work balance.

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?

- Yes, by promoting the use of collective bargaining rather than relying purely on legislation wherever possible. Collective bargaining can be the main implementing tool for a particular issue, or it can provide for a system to permit flexible ‘opt-ins’ and ‘opt-outs’ to a basic legal text. If collective bargaining is properly supported by a sympathetic regulatory framework and conducted in an environment where union rights are fully protected then it can be a dynamic and responsive solution allowing unions at local, regional, industry, national and even pan-European levels to participate in the design and implementation of a wide range of situations, tailored to particular circumstances.

- If collective bargaining is properly supported by the regulatory environment then unions can provide the skills and expertise to support ‘opt-outs’ and ‘opt-ins’ to more complex regulations, thus permitting greater flexibility and better informed solutions than can be provided by legislation. The role of the unions in negotiating such flexibility is essential: the UK Working Time Regulations ‘allowed’ individual employees to ‘opt out’ of the maximum working hours considered acceptable by the EU under its health and safety competence, leading to some employers pressuring the weaker bargaining party (the individual worker) to agree to longer hours and exploitation of the individual worker’s lack of awareness of the health and safety implications of overwork.

- And so we recognize that there is a role for flexibility of employment rights if this means that a deviation from ‘normal’ rights is something that can only be agreed to by an independent trade union. We would be greatly concerned by any flexibility which could be forced upon workers by unscrupulous employers taking advantage of their minimal bargaining power and limited awareness of the potential problems associated with opting out of various legislative provisions.

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?

- A number of recent studies have begun to cite evidence of a high level of correlation between high labour standards and economic success. We reproduce below extracts from a recent report issued by the Friedrich-Ebert-Stiftung which blasts many of the myths that surround opposition to core labour standards:

>“None of the stated objections to the application of ILS stands up to scrutiny. While certain ILS may in fact cause higher production costs, at least initially, the dimensions of the cost
increments are often blown out of proportion. As a rule, such costs are compensated by higher productivity, innovation and other improvements in economic performance, so that unit labour costs – the decisive parameter for competitiveness – do not effectively rise, but instead often decline with the pursuit of labour standards. Investment in human resources enhances the opportunity for product and process innovation, thus giving countries a greater competitive advantage.

“In a recent report by the British Proudfoot Consulting Company in 9 countries, including Austria, Australia, France, Germany, Hungary, South Africa, Spain, the UK, and the US, it was shown that between 38 per cent and 43 per cent of the total working time was lost as a result of poor management. Among the major deficiencies were inadequate management planning and control, inadequate supervision, and ineffective communication.

ILS may be seen as a mechanism and instrument for enhancing productive efficiency. Their economic function is helping to establish the legal and institutional framework for human resource development, to ensure equity and justice in the work process, as well as a measure of certainty and predictability, in order to elicit the productive potential of both workers and employers. Standards help to avoid the over-use as well as under-utilization of working capacity and the exploitation of weak individuals and groups in the labour market.

“The salutary impact of ILS on productivity is increasingly being recognized. In 2000, OECD published the results of a survey of empirical studies on the impact of all core ILS for 75 developed and less developed countries. It was found that countries which strengthen their core labour standards can increase economic efficiency by raising skill levels in the workforce and by creating an environment that encourages higher productivity and innovation (OECD 2000)”.

- What is required if the EU and its Member States are to implement the lessons of the findings set out above is a long term commitment to build effective societies in which workers are valued and their contributions are properly rewarded. High productivity and high labour standards go hand in hand. The promotion of flexible working arrangements that allow employers to hire and fire almost at will cannot be conducive to creating the kind of environment identified by the research as conducive to economic success.

- We believe that it is important not to exclude SMEs from the regulatory regime. The key point is to focus on the purpose of the legislation: the purpose of legislation on the right to union recognition, for example, is to protect the labour rights of the worker (in the case of freedom of association this is also a core human right). Why should a worker be unprotected by the law or lose his human rights simply because his employer has a staff of 19 rather than 20 (as is the case under the British union recognition system)?

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?

- We believe that non-standard contracts can have a role in modern Europe, particularly where these contracts are offered freely to workers who choose them in situations where standard contracts are also equally available to them. We believe that such contracts can achieve flexible working arrangements that are to the benefit of both employers and employees.

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- But we are greatly concerned that non-standard contracts can be a vehicle to allow unscrupulous employers to deny access to employment rights that are otherwise generally available.

- We are also concerned that employees might be pressured into accepting non-standard contracts. Consequently, the key to ensuring that workers are not pressured into accepting non-standard contracts against their wishes is to ensure a strong role for trade unions. If the approval of non-standard conditions required the agreement of an independent trade union then this would minimize the potential for abuse.

- We were interested in the proposals around employment transitions, particularly the suggestion that severance awards based on the Austrian experience could be a model for future reforms. This suggests that a central state-administered fund would collect and distribute severance awards rather than individual companies retaining responsibility for severance payments. The proposal appears to suggest that an employee could leave one company voluntarily to seek work at another without losing his or her entitlement to severance pay in respect of the years of work they have performed for the first company. If this is indeed the proposal then it would seem to promote a radical solution that should boost employee mobility. Such a system could be expected to remove the disincentive employees face in leaving established jobs (which is that they typically lose their right to severance pay). Broadly speaking we believe that this could boost employee mobility in a way that might be helpful to employers and to the economy, and we express our support for further consideration of this proposal. But in doing so we recommend that such a system, under which it could be said that employment rights become attached to the worker rather than to the employer, should ensure that all employment rights would be transferred with the worker: thus a worker in the UK who had performed a number of years service at company A could leave to join company B without losing her entitlement to maternity pay, redundancy or unfair dismissal pay, or any other rights that are presently available only after a worker has completed a certain number of months or years with their current employer.

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?

- We are concerned generally that ‘flexible’ legislation might contribute to a situation that allows workers to be exploited. Despite UK legislation which supposedly protected all of the following rights, ICTUR Vice President Keith Ewing observed the implications of the exceptions in a presentation to the Industrial Law Society:

“Take a young man in his mid 20s, employed as a security guard. Despite the great reforms since 1997, it remains the case that he may be hired on a lower minimum wage; he may be required to agree to work long hours, certainly more than the prescribed international and EU maximum of 48 hours weekly; he may have no right to have his trade union recognised for collective bargaining if he has 19 rather than 20 colleagues; he will have no right to be represented by a trade union in the negotiation of his terms and conditions of employment; and he will have no right to be treated fairly by his employer for the first year of his employment”5.

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- This, and much worse, is often the outcome of flexible employment legislation.

- As we have indicated in previous answers, we believe that the key is to make any or all such ‘opt outs’ subject to the approval of an independent trade union, and open to review or amendment through negotiation. If the opt outs are open to agreement between the individual worker and employer then we believe that in many cases this will lead to abuse.

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?

- We believe that the promotion of opportunities to access education and training is an essential part of a labour law strategy to boost workforce skills, work-life balance, productivity and economic efficiency.

- This is an example of the kind of right that we believe should be provided for by legislation but implemented through a union-employer negotiated process that could provide for such a scheme to be responsive to local needs and the concerns and requirements of the individual employer and workers.

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?

- Greater clarity is needed in this area, coupled with a commitment by the Commission to end the abusive sham use of self-employment which is used as a tool to avoid tax liabilities and labour law protections. We welcome the recognition in the Green Paper of ‘disguised employment’ as a real problem, which the Green Paper describes as ‘illegal’ and ‘inappropriate’.

- However, we do not agree with the recommendation in the Green Paper that this is an issue that should be dealt with at only at the national level. Action is required at the regional level to promote a Europe-wide coherence around a problem that manifests itself throughout the Union. With the increasing movement across borders of workers and contractors this problem is increasingly one that can be more effectively addressed by Europe-wide regulation.

- We are concerned by the apparent enthusiasm demonstrated in the Green Paper for the ‘targeted approach’ of the UK that establishes differing rights and responsibilities in employment law for ‘employees’ and ‘workers’. We welcome the recognition that all workers and not just employees should have access to rights around health and safety, discrimination, minimum wage and collective bargaining, but we are concerned that non-application of severance awards and other rights to workers who are not employees could be problematic. We urge the EU not to legitimize any process that allows unscrupulous employers to define the status of their workers purely as an excuse to avoid granting them access to their employment rights.

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 do not believe that removing entitlement to employment rights is the key to economic dynamism in Europe. Rather, all workers should be entitled to benefit from the stability and protection against exploitation that is offered to them by law.

- Europe must take a leading role in challenging the short-termism that infects US-led thinking on business efficiency. Is the key to efficiency really to allow companies to hire and fire workers almost at will in response to minor fluctuations in their economic fortunes or the will of shareholders? Or is the key to economic success to use regulatory systems to encourage all employers to take a longer term approach to investment in their workforce? We believe that the latter must be the principle that we pursue in Europe.

- Current research suggests that high labour standards correlate with stronger economies. We agree that too much 'red tape' can be a burden for business, and we therefore support clear, precise legislation of broad application with a strong focus on protecting and promoting the right of workers (and the obligation of governments and employers) to engage in collective bargaining.

ICTUR has not prepared replies to specific questions 9 or 10.

11. How could minimum requirements concerning the organization of working time be modified in order to provide greater flexibility for both employers and employees, while ensuring a high standard of protection of workers' health and safety? What aspects of the organization of working time should be tackled as a matter of priority by the Community?

The experience of working time 'opt outs' in the UK has been disastrous for many working people who have been forced into agreeing to work much longer hours than the 48 per week deemed appropriate by the EU Commission. Workers without strong union representation have been at particular risk of being forced to accept the demands of their employers. The solution might be to require any 'opt outs' to be agreed to not by individuals but by their trade unions. Such a solution could provide dynamic flexible solutions to specific needs at local levels through the involvement of local level union representatives drawing upon the skills and bargaining power of their national organizations. This solution would further promote compliance with ILO Convention 98 which calls for the promotion of mechanisms that regulate terms and conditions of employment through collective bargaining.

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?

- Generally we would argue that there is a need for broader application of labour law to cover all workers, with a narrow range of exceptions permissible either where explicitly agreed to by an independent trade union or in a small number of cases where the relationship is genuinely that of independent contractors (but not disguised employment relationships). Hence we would like to see standardisation of the term 'worker' as the general term applicable to all workers and as the basic criteria for access to labour rights.

- We note the cases that are being argued currently before the ECJ by the Swedish union SEKO in relation to the Tor Caledonia ferry, and by the Swedish
union Byggnads in relation to the Laval construction site. Our Swedish labour lawyer correspondents are extremely concerned by these cases, and we urge the Commission to act so as to guarantee the applicability of national labour law to non-nationals working in a Member State.

We believe that one of the core principles of French labour law could be the model to be adopted at EU level in regard to transnational and frontier workers: that the rule 'most favourable to the worker' is the rule that should be applied in the context of conflicting labour law provisions. Such a principle could establish that national law should apply to all national and foreign workers as a default position except where more favourable provisions may apply. The significant point is that the situation must be ended whereby non-nationals can be excluded from protection of national law and subject instead to the application of less favourable provisions. This situation – the subject of the Laval and Tor Caledonia cases – is a cause a serious concern.

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?

ICTUR refers the Commission to the recent work on Labour Inspection carried out by the International Labour Organisation.

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

Yes, and the solution will lie in part with promoting greater awareness of the enhanced social security benefits that are available to workers who pay their full contributions, thus encouraging workers to help the authorities in their efforts to end 'off the books' payments such as those that have recently caused such controversy in Lithuania. It is instructive to quote from ICTUR's correspondent in Latvia who has written on the problem:

'Envelope wages is an illegal system of wage payments quite common in Lithuania, whereby a portion of the total pay is made 'on the side' in order to minimise the employer's social insurance contributions. For Dalia Budrevičienė and workers like her whose daily task involved handling and salting cold wet meat in a windowless basement, the resulting reduced entitlement to social insurance was no mere abstract issue. Many of the workers handling meat had sore and stiff joints. When industrial disability prevented further work, they had restricted access to social insurance benefits'

'Worker attitudes towards envelope wages are ambivalent however, although some now openly voice their dissatisfaction with the envelope wages system. While the payment of envelope wages means that employees will receive reduced social insurance coverage, there is the incentive of a short-term gain in terms of non-taxed wages received in cash'.

'A 2006 survey of Lithuanian employees found some 17.2 percent who admitted to receiving envelope wages, with a further eight percent claiming that they had previously received wage payments in this manner...For those individual workers foolish or brave enough to speak out, there is the certain prospect of unemployment [and] blacklisting'.
- Essentially we believe that any action by the EU must make sure that workers have a better awareness of the entitlements they stand to gain by participating in declared work, and that their rights as whistle-blowers are protected so that they can realistically take a stand against unlawful payments.

- These problems are probably best addressed by promoting permanent stable jobs in workplaces that are 'policed' by strong and effective trade unions in countries where trade union rights are well protected by law. The unions will carry out the educational and whistle-blowing role much more effectively than could individuals who risk unemployment and poverty unless they accept what unscrupulous employers offer them.

Comments / questions or requests for further information should be directed to:

Daniel Blackburn (barrister-at-law), Director, International Centre for Trade Union Rights ("ICTUR"), 177 Abbeville Road, London, SW4 9RL, UK, tel: +44 (0)20 7498 4700, fax: +44 (0)20 7498 0611, website: www.ictur.org, email: ictur@ictur.org

ICTUR will be pleased to consider sending advocates to present submissions in person if that would be of assistance with the Commission's consultation activities.