



Conference of European Churches • Conférence des Églises Européennes • Konferenz Europäischer Kirchen • Конференция Европейских Церквей

Comments on the Draft Working Paper On a Quality and Safety Legal Framework on the Donation, Procurement, Testing, Transport, Preservation, Transplantation and Characterisation of Human Organs

On behalf of
**The Church and Society Commission of the Conference of European
Churches**

The Church and Society Commission (CSC) of the Conference of European Churches (CEC) welcomes the EC initiative aimed at developing a Quality and Safety Legal Framework for Organ Transplantation. Christian faith includes as a central feature “*love for one's neighbour*” and the expression of this may lead well to a freely chosen sacrifice. Thus, the Churches support organ donation and transplantation as an expression of *solidarity* among human beings. However, the Churches hold that it is equally important to respect *human dignity and human rights* and this conviction lies at the core of their approach to this field.

Therefore, we consider that any legal framework should be based on both of these fundamental values, as enshrined in the Lisbon Treaty and the Charter of Fundamental Rights. The value of solidarity is already very obvious in the draft Working Paper. Our wish is to plead for reinforcement of the area of human rights and human dignity. We appreciate the present opportunity to contribute to the draft Working Paper on Organ Transplantation of the European Commission and would make the following comments and proposals. Some years ago we also made a contribution to the Steering Committee on Bioethics (CDBI) of the Council of Europe (CoE) when it was drafting the *Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin (ETS N°. 186)*. Our contribution today is geared towards the reinforcement in the area of human dignity and human rights in this EC Draft Paper.

Since 1997, CEC is an Observer on the CDBI, alongside the European Commission and other bodies. We thus welcome the reference made to the CoE in several places in the part relating to Definitions 2.1.3. We would insist that any future EC Quality and Safety Legal Framework on Organ Transplantation comply with *all the provisions* of the above mentioned Additional Protocol, together with the guidelines and/or legislative provisions laid down by individual Member States, thereby guaranteeing a comprehensive protection of human rights in this field.

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In our view, the best solution would be a general provision making the above mentioned CoE Protocol and its Explanatory Report the ethical and legal basis with which all the provisions of the future EC legal framework would have to comply.

If this were not the case, we would particularly like to draw attention to the following sections in the Draft Paper:

- **Section 2.3.4. on Protection of the living donor and Section 2.3.8. on Conditions of procurement:** See the following Articles in the CoE Additional Protocol:
 - Article 10 on Potential organ donors (the absence of a close personal relationship requires the *approval of an appropriate independent body*)
 - Article 11 on Evaluation of risks for the donor (“before organ (...) removal, appropriate medical investigations and interventions shall be carried out to evaluate and *reduce* physical and psychological risks to the health of the donor” and “the removal may not be carried out if there is a serious risk to the life or health of the donor”)
 - Article 12 on Information for the donor (“the donors and, where appropriate, the person or body providing authorisation according to Article 14, paragraph 2, of this Protocol, (...) shall beforehand be informed of the rights and the safeguards prescribed by law for the protection of the donor. In particular, they shall be informed of the right to access to independent advice about such risks by a health professional having appropriate experience and *who is not involved* in the organ or tissue removal or subsequent transplantation procedures”)
 - Article 13 on Consent of the living donor (“Subject to Articles 14 and 15 of this Protocol, an organ (...) may be removed from a living donor only after the person concerned has given free, informed and specific consent to it either in written form or before an official body. The person concerned may freely withdraw consent at any time”)
 - The whole Article 14 on Protection of persons not able to consent to organ removal. *For the churches, this is a very important point*, regarding the protection of the most vulnerable people in our societies.
- **Regarding organs removed from deceased persons,** See CoE Additional Protocol Article 18 on Respect for the human body this provision should also be part of the future EC framework.
- **Section 2.3.1. on Principles governing organ donation,** in Point 1 we suggest the following phrasing: “Member States *shall* ensure that donations of human organs are voluntary and unpaid”. This is very important for *tackling the issue of organ trafficking* (See next §). At the same time, it would be helpful to indicate that certain specific forms of compensation to living donors should not be regarded as a financial gain or a comparable advantage (See CoE Additional Protocol Article 21)
- **Section 2.2.4. on Exchange of human organs with third countries,** it is crucial to add that organ trafficking must be prohibited (See CoE Additional Protocol Article 22).

The CSC provides a link between the CEC’s 125 member churches (Anglicans, Orthodox, Protestants and Old Catholics) from all over Europe to the European Union’s Institutions, the Council of Europe, the OSCE, NATO and the UN (on European matters).