



Conference of European Churches
Conférence des Églises Européennes
Konferenz Europäischer Kirchen



Churches' Commission for Migrants in Europe
Commission des Églises auprès des Migrants en Europe
Kommission der Kirchen für Migranten in Europa



**Contribution of the
Church and Society Commission of the Conference of European Churches (CSC of CEC)
in cooperation with
the Churches' Commission for Migrants in Europe (CCME)
and the European Contact Group (ECG)
to the Green Paper on
'Modernising labour law to meet the challenges of the 21st century'**

Introduction

European churches and church-related organisations working in the area of industrial mission and migration are concerned about the ongoing **high level of unemployment** in the European Union. These concerns also include the increasing segmentation of the labour market, with more and more precarious employment situations and the growing marginalisation of specific groups such as long term unemployed, less skilled people, people with disabilities, single parent families, ethnic minorities and people with a migration background. **The current situation provides a fundamental challenge to the functioning of the social systems and is a fertile ground for extremism and intolerance in society.** We therefore welcome the European Commission's initiative to open the discussion on the modernisation of labour law and a mutual supportive combination of security and flexibility in European societies with the intention to provide "full employment, labour productivity and social cohesion".

In Christian understanding, work is not just a productive factor but a central element of human personality and of participation in society. Thus it must always be organised and carried out with full respect to the human dignity and must serve the common good. A high level of employment and social security are key elements of the European Social model. Far reaching changes of labour law as they are considered in the Green Paper will have relevant impacts on social security, the situation of families, demography and mobility in European societies. We therefore ask the European Commission to take into account the interferences of labour law with these sectors in order to come to better coherence of European social and economic policies.

As Ecumenical fellowships with members in all European countries we are not commenting from a specific national perspective, but **bringing together the experiences of different European societies**, including those from outside the EU. In many European states the churches and their related organisations are providing primary and secondary education, vocational training and active employment measures, e.g. for young people, people with disabilities or

migrants. Thus they are playing 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.

We would like to refer to the responses of Eurodiaconia and of COMECE as Ecumenical partner organisations. Some of our members will provide additional contributions relating to their specific national context.

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

The adoption of employment legislation is a key element of the European Union's Lisbon strategy. Evaluating the results of the Lisbon strategy in the last years, European churches and diaconal organisations expressed their disappointment to the Spring European Council about the lack of progress in the fields of social protection and social inclusion. They stressed the importance of a more **balanced and mutually supportive interaction** between the economic, social and environmental policies of the Lisbon strategy. (Cf. the letter of European churches and diaconal organisations to the German Presidency on 7 March 2007; www.ccc-kek.org/pdf/letterGermanPresidency0307.pdf)

With reference to the conclusions of the Spring European Council, we believe that the modernisation of labour law should be instrumental to **facilitate “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.** The concept of “**decent work**” as developed by the International Labour Organisation is helpful in this context.

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?

The Green Paper focuses on “the personal scope of labour law”. Art 137, 1(f) of the EC Treaty is asking the EU to support and complement the activities of the Member States in the fields of “representation and collective defence of the interests of workers and employers” The right of collective agreements is laid down in the Charter of Fundamental Rights of the European Union (art. 28). This seems to presuppose that **individual flexibility and security should be secured in a legal framework and in collective agreements** - especially in sectors with precarious working conditions and segmented labour markets. Labour law and collective agreements are an important element to protect the most vulnerable in the labour market. Labour market conditions are changing rapidly; consequently we need to align the speed of labour law reforms in order to protect both employers and employees.

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 increase of productivity and the introduction of new technologies are to a large extent dependent on investment in research and development including “human development”, e.g. the continuing vocational training of employees. We would like to draw EU’s attention to the **close link between job security and the motivation and productivity of workers**. Employment contracts, which provide entitlement access to unemployment insurance and pension claims are a strong motivation for workers to perform in their job, invest in further vocational training, being reliable and creative and thus being a positive factor for high productivity and competitiveness.

Education and “life long learning” are a core element for the future of European societies as their economic and social development depends essentially on the knowledge of their citizens. To ensure a high quality of education in the European Union, **learning systems must be accessible and affordable for all members of a society irrespective of the contractual form of employment**. Despite the emphasis on a knowledge-based society, however, continuous attention is required for job opportunities for people with less intellectual or education abilities, for which society remains responsible.

We would like to encourage the European Union to create a “**high risk investment fund**” for **business start-ups** with particular economic risks, which do not have access to the finance market nor to public support. This could be a programme of the European Bank for Reconstruction and Development, which is not obliged to apply sound banking principles, but to invest in “non-bankable” people with promising new ideas. Similar funds in the development sector have proven their economic efficiency over more than 40 years (e.g. Grameen Bank, Oikocredit).

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 share the concern to open new opportunities for “more and better jobs”, as it was originally formulated in EU’s Lisbon strategy. The currently discussed models of flexibility are mostly based on a disconnection of social protection from contractual forms of employment. It should be clarified how employees with such “flexible” contracts have access to social benefits like unemployment insurance and pensions. The experience with such flexible contracts in a number of Member States shows that they include a **high risk that people find themselves transferred from one temporary contract to the other without access to social security nor a chance to work under equal conditions** as workers with a standard employment contract. This is especially the case for young people, in some Member States already described as “intern generation”. Thus it is important to be reflected clearly in modernised labour law security provisions counterbalancing flexibility.

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?

In the current European discourse, “flexicurity” seems to allow a lot of different interpretations. It should be defined more precisely what “flexibility” means in this context: Flexibility in the number of workers, e.g. by an increase of temporary working contracts? Flexibility of working hours, e.g. by individual working time accounts? Functional flexibility, e.g. by multiple deployment possibilities of workers due to a high, diverse level of professional skills? The same applies to assistance to the unemployed. To provide security requires well functioning active labour market instruments, a high level of social protection schemes independent from the form of working contracts and a high standard of social infrastructure, e.g. for child care or elderly care.

The Green Paper refers to the Danish experiences with “light” employment protection, intensive active labour market measures and substantial investment in training as well as high unemployment benefits with strong conditionality. But the diversity of EU Member States makes it highly improbable that one single model could fit very different economic, social and cultural conditions. The very high level of unemployment rates in some regions and for specific groups (youth, older people) makes us question whether “flexicurity” is a realistic option in regions with high structural unemployment rates. The best theories provide no help if no real jobs are actually available. The experiences of some of our members involved in active labour market measures show that they are often not offering sufficient support for the marginalised in the labour market, who need additional help to return to employment. We suggest that the European Union initiates an **impact analysis of active labour market policies on marginalised groups**.

Some of our Nordic member churches point out that the Scandinavian “flexicurity” models are based on a very high level of solidarity. A “personalised” approach to labour law, as underlying in the Green paper, should not lead to an individualisation of risks. In the understanding of the churches living in a society based on the solidarity principle also means a sharing of risks between employers and employees. Security of employment and the depending confidence into the personal future are a decisive factor for social peace and stability in European societies, which should not be put at stake. **Flexicurity needs a very high level of mutual trust of the different stakeholders, if it shall not lead into a general feeling of insecurity in the society.**

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 want to point out a **lack of coherence in EU policies in this area**: EU Commission’s intention of creating a real European labour market with more flexibility and a higher level of occupational mobility has the potential to aggravate the tensions between the requirements of the labour market and the task to protect family life and to encourage families in their caring responsibilities and basic security (cf. EU’s Green Paper on demography p.10). The potential

effects of this policy should be very seriously investigated. Although reconciliation of work and family responsibilities appears in the different agendas and aims on EU level, in fact it seems to be still more a personal matter, or at certain cases that are rather exceptions, the initiative of some employers and not an agreed common goal supported by the adequate legislative measures.

In their contribution to EU's Green Paper on demographic changes European churches and diaconal organisations discussed this question with special reference to the compatibility of work and family life: "Politics and society should support a **more intelligent and flexible apportionment between work and family and social life**, giving the parents, especially the women, a better choice to shape their lives. An integration of individual measures with a lateral policy could significantly improve living conditions for young families, such as individual working time options, reduced and increased working hours, care leaves, sabbaticals, educational leave, long term labour time accounts. EU Member States should provide a legal framework to more flexible working conditions for women and men, which enables them to make choices which will provide the best care for their children and optimal conditions for the family life as a whole. An increasing number of children are growing up in **single parent households**. To enable these parents to earn their living and income for their families, extensive child caring facilities or alternatively benefits for taking care of their own children must be provided. EU Member States should therefore provide a **legitimate claim for childcare coverage** from an early age onwards, in order to ensure a high standard of caring facilities for children." (Strengthen a mutual sense of responsibility in European societies. Contribution of European churches, diaconal, migrant and youth organisations to the EU Green Paper on demographic changes. www.cec-kek.org/pdf/DemographyGreenPaper.pdf)

Life-long learning is of growing importance for increasing work flexibility. We welcome initiatives to support **access to training for people under all forms of legal working contracts**. Churches and their related organisations are in many member states involved in education and professional training. They are committed to contribute with their facilities to promoting the capacities of people in European societies. We ask the European Union and its Member States to pay special attention to equal opportunities for education and training for less-skilled people and people with disabilities.

We support the creation of **innovative arrangements providing for transitions** between jobs without a break in employment, e.g. the "**working foundations**" (Arbeitsstiftungen) in the Austrian system, as this provides a very effective system for transitions. Independent studies show that although such a system is expensive in the short term, it is financially beneficial in the longer term because unemployed workers tend to get better jobs and remain unemployed for a shorter time.

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 question cannot be answered in a general way. The European Contact Group indicates that the issue deserves further examination, especially the protection of workers from disguised or fictitious employment.

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 problem seems rather to be on the level of **implementation of the existing rights**. In the European Year of **Equal Opportunities for All** we would like to draw EU’s special attention to the lack of equality between men and women on the labour market. Article 23 of the Charter of Fundamental Rights explains, “equality between men and women must be ensured in all areas, including employment, work and pay.” Statistics show that employment, work and pay are still not distributed equally in all European countries. We encourage EU Member States to take care to implement fundamental rights on equality between men and women. Similarly, people from ethnic minorities still face discrimination in employment, both regarding access and promotion into higher and better-paid positions. The EU anti-discrimination directives of 2000 are important tools, but as transposition has been delayed in a number of Member States, the impact and results still need to be evaluated.

“Making work pay” is a basic element in a balance between flexibility and security. Churches and their related organisations are **concerned about the growing number of people working without a sufficient income to live their lives adequately**. It is in the competence of the Member States to improve this situation by defining minimum wages and active labour market policies. We are concerned that the very diverse level of wages in Europe has the potential to endanger social peace in European societies and is a threat to the sustainable performance of the European economy. It is in the competence of the EU to promote social coherence in its Member States and in its neighbourhood policies.

Many migrants respond to labour market needs and work in precarious and/or irregular situations. In the absence of an EU immigration policy, many have little choice. Under-employment and exploitation are features of some segments of the labour markets that need to be looked at carefully with regard to regulation. Social partners and immigration authorities have a joint responsibility to find solutions which take into account **labour market needs, fundamental rights of migrants, and fair competition rules** among low-skilled jobs. Initiatives for seasonal and temporary permits for migrants can be important to address this situation, if they are introduced with a clear focus on social cohesion.

The Churches’ Commission for Migrants in Europe (CCME) is particularly concerned about the need to properly address **basic rights for migrants**. The legal status of migrants is still the subject of hugely diverse national legislation. This leads to enormous problems, among which trafficking and new forms of slavery are only the most dramatic. We therefore reiterate the call that EU Member States should agree on a coherent and transparent migration policy, which recognises the rights of migrants. One of the most important tools of such a policy would be the

ratification of the 1990 UN Convention of the Rights of All Migrants and their families by EU Member States and the EU once the Convention has gained legal personality.

Having in mind the **specificity of the work performed for churches and church related organisations** it also should be recalled that the provisions of the EC law make it clear that the European Union “*respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States*” and that it equally “*respects the status under national law of philosophical and non-confessional organisations.*” (Declaration 11 of the Treaty of Amsterdam, also laid down in Art. I-52 of the Treaty establishing a Constitution for Europe). With this in view, the Member States may maintain or lay down specific provisions on genuine, legitimate and justified occupational requirements which might be required for carrying out an occupational activity.

Rest from work is an important element of working conditions. This does not only mean a physical recovery of the working forces, but also includes a social dimension. For this reason, necessary measures should be taken to safeguard **Sunday rest**, allowing exceptions based on the specificities of certain jobs or public purposes. Sunday as the weekly day of rest is deeply rooted in the religious and cultural traditions of all European societies. It is the day of rest, which allows the practice of religion for the vast majority of European citizens and it is moreover the collective time for all people to pause and be compensated for the pressure of their workday occupations.

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"?

Particularly with regard to contracted services, greater clarity in employment rights and obligations would be highly desirable. In addition to legal clarity, however, information and training on rights is vital for employers and employees, particularly at low-skills level and for short-term employees including migrants. If there were **clear formulas with regard to subsidiary liability**, this may serve as an option. However, accountability and liability need to work in practice; subsidiary liability should by no means lead to outsourcing responsibilities on other partners. **A study into practices and impact assessment** of measures in this field may be a useful starting point.

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

The issue has already been tackled by the EC legislation in the frames of a Directive of the European Parliament and the Council on working conditions for temporary workers. Although the proposal for the Directive is still discussed in the Council we would ask the Commission to clarify this question in relation to this Directive.

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?

We would ask the European Commission to clarify this question in relation to the Directive 2003/88/EC of the European Parliament and the Council of 4 November 2003 concerning certain aspects of the organisation of working time.

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?

We would welcome if the Member States were able to come to a **common definition** of “worker”, also in relation to the ILO activities in this area. Beside the question of definition, which falls under the competence of the Member States, we would like to encourage the EU and its Member States to come to **common solutions for all the practical questions** linked to the mobility of workers, e.g. the provision of social and health services or the portability of pensions. (Cf. the contributions of European churches and diaconal organizations to the communications on social and healthcare services and to EU’s Green Paper on demography: www.cec-kek.org/content/economic.shtml) These issues are also of particular importance for migrant workers from neighbouring countries. A comparison of the bilateral agreements with regard to frontier workers may help to identify the specific requirements of states, employers and employees.

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?

Rather than administrative cooperation the **training of relevant authorities** would need to be addressed as a priority. If such training could be offered in a setting that also allows for enhanced cooperation. The involvement of social partners will be vital for the application of labour law. As the modernisation of labour law does not only affect public authorities and social partners, we would like to encourage the European Union to **involve as well civil society and other stakeholders like churches**. This would be a contribution to “active European citizenship“ and could help to bring Europe closer to its people.

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

The Churches' Commission for Migrants in Europe and other Christian partner organisations have pointed to the fact that irregular migration is closely linked to undeclared work and labour market needs in a number of economic sectors. Therefore, determining labour market needs and immigration opportunities linked to job offers in these sectors are vital to address this situation. We recognise the difficulties to address these issues in a coherent way. However, the Economic and Social Committee of the EU has addressed the issue in comprehensive reports offering options. As mentioned above, **setting of minimum wages, and guaranteeing social rights to migrants even (or particularly if) in irregular situations** may prove an effective tool to decrease undeclared work as this could contribute to establishing fairer competition rules on the labour market.

Brussels, 30 March 2007

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***The Church and Society Commission (CSC)** is one of the commissions of the Conference of European Churches (CEC). The CSC links CEC's some 125 member churches from all over Europe and its associated organisations with the European Union's institutions, the Council of Europe, the OSCE, NATO and the UN (on European matters). Its task is to help the churches study church and society questions from a theological social-ethical perspective, especially those with a European dimension, and to represent common positions of the member churches in their relations with political institutions working in Europe.*

***The Churches' Commission for Migrants in Europe (CCME)** is the ecumenical agency on migration and integration, asylum and refugees, and against racism and discrimination in Europe. Members are Anglican, Orthodox and Protestant Churches and Councils of Churches as well as church-related agencies in presently 16 European countries. CCME cooperates with the Conference of European Churches and the World Council of Churches.*

www.cec-kek.org/English/ccmenews.htm

***The European Contact Group (ECG)** is an ecumenical network concerned with employment issues. It has members in 26 European countries that are actively engaged in issues affecting working life. The main focus is the promotion of good work, the addressing of unemployment and precarious work, as well as with urban and rural communities and economic development.*