
Answer to first-phase social partner consultation

Possible action addressing challenges of access to social protection for people in all forms of employment

Introductory remarks

In its opinion paper¹ accompanying its contribution to the public consultation on the European Pillar of Social Rights, adopted in December 2016, CESI recognised spreading but unregulated new forms of employment as well as, in this context, social protection as an area urgently requiring the attention of the EU, writing that high *“existing protection standards and rights in traditional forms of employment must be applied to new forms of labour”* and calling for *“truly effective solutions”* to achieve higher levels social protection within in the meaning of Art. 9 TFEU.

CESI welcomes that the European Commission picked up challenges related to access to social protection within several of the 20 principles composing the European Pillar of Social Rights, issued in April this year, such as principle 4 on active support to employment², principle 5 on secure and adaptable employment³ and, most importantly, principle 12 specifically on social protection.⁴

Universal, quality and accessible social protection for all is a central tool to ensure a return to welfare systems that emphasise solidarity, fair work, security, more social equality and freedom from poverty in rapidly evolving economies. In a main motion adopted at its last Congress in December 2016⁵, CESI stated that as result of globalisation, digitalisation, mobile work models and recent neoliberal labour market reforms *“an increasing number of persons is becoming economically active in newly emerging atypical and flexible forms of employment like crowd-working, job-sharing or employee-sharing. Bogus self-employment statuses mean that these forms of employment often remain unregulated. They should not serve as an escape from statutory regulation.”* Another adopted main motion⁶ noted: *“Adequate protection levels must be guaranteed for workers throughout the EU, in terms of individual and collective labour law and*

¹ Available at http://www.cesi.org/wp-content/uploads/2014/03/CESI_Messages-Social-pillar_EN_20161201_ADOPTED-1.pdf

² *“Everyone has the right to transfer social protection entitlements during professional transitions.”*

³ *“Regardless of the type of employment, workers have the right to access to social protection.”*

⁴ *“Regardless of the type of employment, workers and, under comparable conditions, the self-employed, have the right to adequate social protection.”*

⁵ Available at: http://www.cesi.org/wp-content/uploads/2014/03/CESI-Congress-2016-motion-III-Digitalisation_EN_adopted-1.pdf

⁶ Available at: http://www.cesi.org/wp-content/uploads/2014/03/CESI-Congress-2016-motion-I-Investing-in-people_EN_adopted-1.pdf

protection against traditional life risks. International minimum social protection and labour law standards must be recognised.”

In this context, CESI welcomes this consultation as a step to help realise objectives set out in the principles mentioned above. At the same time, CESI stresses that access to quality and accessible social protection for all is just one component to achieve fair labour markets and inclusive societies. Further improvements as regards adequate and more equal worker rights and better labour protection and working conditions across the labour force need to be addressed by the EU elsewhere, partially in the context of the Written statement directive 91/533/EEC but also, beyond this and where applicable, in the context of a new legally binding framework on decent work. CESI notes that consistency and proper complementarity between different legal texts will be instrumental.

Part 1: Workers in non-standard forms of employment

1. Do you consider that the Commission has correctly and sufficiently identified the issues and the possible areas for further EU action?

The consultation document correctly and sufficiently identifies many of the problems that many of the people in non-standard and new forms of employment face on a daily and recurrent basis.

In order to decrease developing gaps between standard and non-standard forms of employment in terms of social protection, which also lead to intra- and inter-generational gaps as mentioned in the consultation document (p. 4), CESI calls on the European Commission to aim high and to include all forms of employments within the application of the initiative.

CESI generally agrees with the European Commission’s description and analysis of the challenges related to insufficient access to social protection set out in section 2 in the consultation document: gaps in access; lack of transferabilities; and regulatory complexity/lack of transparency. CESI agrees with the envisaged objectives to foster upward social convergence as laid out in section 4 of the consultation document with regards to (1) making social protection rights and related information transparent and (2) simplifying administrative requirements. CESI also favours to make social protection rights transferable but asks the Commission to clarify, and discuss if applicable, what “*tying social protection rights to individuals*” entails.

As regards the objective of ‘ensuring similar social protection rights for similar work’, CESI stresses that in many Member States there has been pressure to downgrade social protection also for standard forms of employment. In these cases, and if upward social convergence is to be taken seriously, it is problematic to take social protection in standard forms of employment as an ideal-type reference benchmark for new forms of employment. The consultation paper should have made this clear.

CESI questions whether extra non-wage labour costs as a result of better social protection for people in new forms of employment would lower the demand for labour (p.9 in the consultation document). CESI deems such reasoning highly dangerous because it suggests that slaying social protection could be a tool to induce companies and employers to hire more. The consultation at hand should lead to better social protection and not the other way round.

2. Which branches of social protection and employment services do you consider to be most relevant for an EU initiative covering access for workers in non-standard forms of employment?

All fields mentioned by the Commission – unemployment benefits, sickness benefits, benefits in respect of accidents at work and occupational diseases, old-age benefits, invalidity benefits, survivor’s benefits, maternity and equality paternity benefits, family benefits, healthcare and long-term care – are central areas of social protection. CESI opposes selecting individual fields or ranking them.

By the same token, CESI considers all three mentioned employment services – guidance, counselling and placement; training and updating; rehabilitation and re-insertion measures – equally important for a holistic approach to achieve comprehensive social protection systems that are at the service for all. A ranking would not be appropriate.

3. Should all workers in non-standard forms of employment be included in such an initiative?

In order to avoid widening gaps in rights, entitlements and protection levels between standard and non-standard forms of employment, CESI believes that the initiative must include all workers in non-standard forms of employment.

However, to achieve this, CESI considers that there is a need for a *common-sense* shared definition of the term ‘worker’, especially in the context of new forms of employment. This is a precondition to regulate and fence-in rapidly evolving and emerging new forms of employment, making them subject to adequate minimum labour and social standards and social security entitlements. Without a clear definition, it remains easy to circumvent rules. A reason why many people earning their living in non-standard forms of employment do not enjoy access to adequate social protection is that the forms of employment they engage in are a ‘new forms’ of employment which continue to evolve and have not yet been properly regulated as ‘employment’.

This would be in line with CESI’s demand expressed in a main motion adopted at its last Congress in December 2016⁷, which called for a common, broad and clear “*definition of ‘worker’ ... at EU or international level*” and noted that “*this could ... make social and labour rights applicable to all persons in any de-facto dependent work relationship. High protection standards and rights in traditional forms of employment must be applied to new forms of labour – not new weak rules. A race to the bottom must be prevented.*”

4. Do you consider that improvements should be made to EU legislation or other EU level instruments to address the identified issues?

There is a need mainly at national level for a better implementation and enforcement of existing pieces of EU legislation regulating some aspects related to social protection in non-standard forms of employment which are mentioned on p.10 in the consultation document. As indicated in CESI’s opinion paper⁸ accompanying its contribution to the public consultation on the European Pillar of Social Rights, it is vital that “*that the EU, together with the Member States, the social partners, trade unions and employers, ensures the proper and swift implementation and enforcement of EU law and rules in employment and*

⁷ Available at: http://www.cesi.org/wp-content/uploads/2014/03/CESI-Congress-2016-motion-III-Digitalisation_EN_adopted-1.pdf

⁸ Available at http://www.cesi.org/wp-content/uploads/2014/03/CESI_Messages-Social-pillar_EN_20161201_ADOPTED-1.pdf

social affairs without exception. Enforcement is to be guaranteed legally (e.g. through proceedings, infringement procedures, collective agreements) administratively and politically.”

CESI agrees with the European Commission that Art. 153(1)(c) TFEU provides for the EU to adopt legislation in the area of social security and social protection of workers and could be used to establish new EU legislation to address challenges of access to social protection for people in non-standard employment. CESI also agrees with the Commission that a combination of Art. 151 and Art. 352 TFEU could be the base for EU legislation seeking to address access for people in self-employment. CESI positively considers that the European Commission’s proposition of regulating social protection based on this combination shows a real will from the Commission to develop a more social EU.

After possibilities of social partner agreements under Art. 154 and Art. 155 TFEU have been explored and if social dialogue reaches its limits and no adequate improvements can be achieved for workers, CESI advocates that the European Commission tables legislative proposals to strengthen social protection for people with independent work status and in bogus self-employment and new forms of employment.

According to CESI, the European Commission should use European Semester to encourage and remind Member States systematically to put in place and maintain strong social protection systems. Apart from providing important social returns, adequately resourced social protection systems can work as highly effective automatic stabilisers for economies in times of crises as well.

CESI considers the Open method of coordination (OMC) only as a complementary tool to accompany more forceful efforts for more upward social convergence through social dialogue/legislative action.

5. Would you consider initiating a dialogue under Article 155 TFEU on any of the issues identified in point 4 of this consultation?

CESI is always in favour of social partner dialogue under Article 155 TFEU. This also applies to topics related to social protection. However, if social dialogue reaches its limits and no adequate improvements can be achieved for workers, CESI calls on the legislator to act where possible.

Part 2: People in self-employment

1. Do you consider that the Commission has correctly and sufficiently identified the issues and the possible areas for further EU action?

The consultation document correctly and sufficiently identifies many of the problems that many of the people in forced (‘bogus’) self-employment face on a daily and recurrent basis.

According to CESI, measures for better social protection should especially target those people that are driven into forced (i.e. bogus) self-employment without full rights, entitlements and protection but which are de facto still in dependent work relationships, since this is a spreading phenomenon to avoid paying social security and other non-wage labour costs to the workers. As laid out below, such measures will require a *common-sense* shared definition of the term ‘worker’ (as opposed to bogus ‘self-employed’).

CESI disagrees with the notion that “Member States are to safeguard job creation coming from self-employment” (p.7 in the consultation document) if this serves to promote forced (bogus) self-employment. Self-employment should always be voluntary and driven by an entrepreneurial spirit, and not be seen as a last resort to avoid unemployment.

2. Which branches of social protection and employment services do you consider to be most relevant for an EU initiative covering access for *people in self-employment*?

All fields mentioned by the Commission – unemployment benefits, sickness benefits, benefits in respect of accidents at work and occupational diseases, old-age benefits, invalidity benefits, survivor’s benefits, maternity and equality paternity benefits, family benefits, healthcare and long-term care – are central areas to social protection. CESI opposes selecting individual fields or ranking them. If there would be an absolute need for choice, CESI would focus on unemployment benefits, sickness benefits and old-age benefits as three branches are particularly problematic for self-employed people.

By the same token, CESI considers all three mentioned employment services – guidance, counselling and placement; training and updating; rehabilitation and re-insertion measures – equally important for a holistic approach to achieve comprehensive social protection systems that are at the service for all. A ranking would not be appropriate.

3. Should all people in self-employment be included in such an initiative?

CESI believes that all people in de facto dependent work relationships should be covered by this initiative. It is vital that the initiative spans to all persons with independent or self-employed status that are actually in dependent work relationships (bogus self-employment).

However, to achieve this, CESI considers that there is a need for a *common-sense* shared definition of the term ‘worker’ (as opposed to bogus ‘self-employed’) first. This is a precondition for a ‘regularisation’ of people in de facto dependent work relationships but with independent status or in bogus self-employment (forced upon them), making their work subject to adequate minimum labour and social standards and social security entitlements. Without a clear definition, it remains easy to circumvent rules. A reason why many people earn their living as independent workers or in bogus self-employment without social protection is that a lacking definition of what constitutes the term ‘worker’ makes it easy for superiors to refuse standard employment with full rights and protection.

This would be in line with CESI’s demand expressed in a main motion adopted at its last Congress in December 2016⁹, which called for “*clear definitions of ‘worker’ and ‘self-employed’ ... at EU or international level. This could ... make social and labour rights applicable to all persons in any de-facto dependent work relationship. High protection standards and rights in traditional forms of employment must be applied to new forms of labour – not new weak rules. A race to the bottom must be prevented.*”

⁹ Available at: http://www.cesi.org/wp-content/uploads/2014/03/CESI-Congress-2016-motion-III-Digitalisation_EN_adopted-1.pdf