
Answer to first-phase social partner consultation

Possible review of the Written Statement Directive 91/533/EEC

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 highlighted the need to close legislative gaps in fields in which the EU has competences via ambitious and binding standards, relating this in particular to employment relationships and worker rights in new, flexible forms of employment and mobile and digital work models.

CESI welcomes that the European Commission picked up challenges in this field within several of the 20 principles composing the European Pillar of Social Rights, issued in April this year, such as principle 5 on secure and adaptable employment² and principle 7 on information about employment conditions and protection in case of dismissals.³

Decent and adequate working conditions and fighting precarious work are central to ensure fair labour markets and a healthy and productive workforce. In a main motion adopted at its last Congress in December 2016⁴, CESI stated that as a 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.”*

CESI welcomes the planned review of the Written Statement Directive as a step to help realise these objectives. At the same time, CESI stresses that this consultation on an adjusted Written Statement Directive should just be one component to achieve fairer labour markets and more inclusive societies. Depending on the scope that this initiative will entail and depending on the extent to which the rules of the

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

² *“Regardless of the type of the employment relationship, workers have the right to fair and equal treatment regarding working conditions”; “Employment relationships that lead to precarious working conditions shall be prevented, including by prohibiting abuse of atypical contracts.”*

³ *“Workers have the right to be informed in writing at the start of employment about their rights and obligations”; “Prior to any dismissal, workers have the right to be informed of the reasons and be granted a reasonable period of notice. They have the right to access to effective and impartial dispute resolution and a right to redress.”*

⁴ Available at: http://www.cesi.org/wp-content/uploads/2014/03/CESI-Congress-2016-motion-III-Digitalisation_EN_adopted-1.pdf

Written Statement Directive can be extended, further action for more equal worker rights and better labour protection and working conditions across the entire labour force should be envisaged via already existing applicable EU legislation or a dedicated new, legally binding EU framework on decent work. Further improvements as regards adequate social protection should be pursued in line with the social partner consultation on this topic which is running in parallel to this consultation

CESI greatly appreciates the European Commission's plans to regulate the term 'worker' in the Written Statement Directive, which will bring stronger legal certainty and improve rights especially of those economically active people not covered by the scope of the present directive. However, according to CESI, a separate, autonomous piece of legislation defining the term 'worker', which all other pieces of EU social and employment legislation should refer to, would have been preferred. CESI hopes that a revamped Written Statement Directive can fulfil this role. CESI notes that consistency and proper complementarity between different legal texts will be instrumental.

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

When setting out a common definition of the term 'worker', CESI suggests to make a specific reference to the Court of Justice of the EU (CJEU), which in the *Deborah Lawrie-Blum v Land Baden-Württemberg* case (C-66/85 of July 3 1986) defined the concept of worker as having four components: *"for a period of time"*; *"provides services to another person or company"*; *"under the direction of another person"*; and *"receives remuneration for those services"*.

CESI notes that challenges in several areas⁵ related to quality of employment for those in atypical or new forms of employment, and those in bogus-self-employment, are not addressed in this consultation on a possible revision of the Written Statement Directive. According to CESI such issues should be addressed by explicitly referring to a common definition of the term 'worker' (as laid out in the consultation document) in corresponding existing EU legislation or in a new, legally binding framework on decent work for all.

2. Do you think that the Commission should engage into legislative work in one or several of the identified possible areas for further EU actions?

According to CESI, the Commission should engage in legislative work if social dialogue fails, as mentioned to in question 3. CESI believes that the changes mentioned by the Commission to the Written Statement Directive are necessary to ensure a stronger legal certainty and better rights and employment conditions for all people in (de facto) dependent work relationships. The Written Statement Directive should also become a tool to help bring down bogus self-employment.

It is a priority for CESI that the Directive is made more effective by extending the information package, improving redress and sanction measures, reducing the two-month notification deadline, and, most importantly, extending the scope of its application to all people in de facto dependent work relationships, including bogus self-employment. CESI welcomes the Commission's endeavour to find, as a precondition for this, a common definition of the term 'worker' (page 8 in the consultation document). As stated in a

⁵ This relates, for instance, to non-discrimination at work, health and safety at work, consultation and information rights, and the explicit freedom and right of association and representation, collective bargaining and collective action.

main motion⁶ adopted at CESI's last Congress in December 2016 and in its opinion paper⁷ accompanying its contribution to the public consultation on the European Pillar of Social Rights, CESI stressed that *“to render work in new forms of employment regular and secure ... clear definitions of “worker” and “self-employed” should be agreed upon at EU or international level. This could enable obligations to ... make social and labour rights applicable to all persons in any de-facto dependent work relationship.”* According to CESI, the definition of the term ‘worker’ put forward in the consultation document should serve as a reference point for all other pieces of EU social and employment legislation.

CESI also agrees with the Commission's reasoning to broaden the objectives of the directive by defining minimum floors of workers' rights in the areas laid out on p.13 of the consultation document. CESI stresses that the wording of definitions of minimum floors should be as ambitious and clear as possible in order to avoid an easy navigation around them by employers.

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

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

⁶ Available at http://www.cesi.org/wp-content/uploads/2014/03/CESI-Congress-2016-motion-III-Digitalisation_EN_adopted-1.pdf

⁷ Available at http://www.cesi.org/wp-content/uploads/2014/03/CESI_Messages-Social-pillar_EN_20161201_ADOPTED-1.pdf