

CEEP RESPONSE ON FIRST-PHASE CONSULTATION OF SOCIAL PARTNERS UNDER ARTICLE 154 TFEU ON A CONSOLIDATION OF THE EU DIRECTIVES ON INFORMATION AND CONSULTATION (I&C) OF WORKERS

Executive summary

- CEEP fully shares the Commission's assessments and key observations in the fitness check, published on the 26 July 2013, and the consultation document, that the three Directives are (broadly) fit for purpose.
- Thus, stemming from this assessment there should be no reason to change the current provisions of the three directives. Status Quo should therefore be the preferred option. Following the motto "Don't try to mend what is not broken", there is no need for a consolidation/recast of the directives.
- Changes in the Directives, a consolidation or a recast under these circumstances would contradict the new Commission's guiding principles for its work; only to act on issues when necessary re; simplification, clarification, better regulation, REFIT.
- It is entirely inappropriate to, in any manner or form, widen the scope of a new joint Directive on Information and Consultation (I&C) to include public administration.

Page 7, 4.1, first paragraph in the consultation document states: “Overall the Commission fitness check pointed out that the three I&C Directives as amended appear coherent and mutually reinforcing. There is no evidence of any duplications or contradictions resulting in problems in their practical implementation”.

Nevertheless, the Commission explores in the consultation document different elements which could justify the revision or the recast of the three directives, which is an important concern for CEEP’s members.

In the consultation paper, the Commission attempts to argue about alleged gaps and shortcomings, incl. uncertainties and inconsistencies. However, the Commission does not present concrete or comprehensible examples/reasons that would justify changes in the current provisions or a consolidation/recast.

E.g. p. 6, §4, the Consultation document states that “*Stakeholders at company level*” have a critical opinion without specifying what the actual problem is. On p. 7, § 1, it is stated that “*there are calls... for better standards and definitions*”, without further clarification on who issued these alleged calls. Furthermore, on p. 6, § 4, the Commission states that some of the issues “*may relate to the Directives transpositions in the Member States*”. If Member States have not properly transposed the EU directives then their effective implementation should be the focus of the Commission’s activities, since after all the instruments have been assessed “fit for purpose”.

Do you think that the Commission should launch an initiative to revise or recast the three Directives on I&C of workers at national level? If so, what should be its scope?

It appears essential to maintain the present provisions of the directives which ensure enough flexibility and room for maneuver for the national level (Member States, national social dialogue etc), and the possibility for the Member States to make their own definitions etc. To work, these kinds of provisions must be designed in a general way, allowing the national level and social partners to adjust/ implement it in a way suitable for the labour law and industrial relations’ system in the specific Member State.

The possible adoption at EU level of a standardised definition for “information” seems misleading. For example: the “Collective redundancies” and “Acquired Rights” Directives already specify the exact information required in each case. The definition of the information content for each directive cannot be substituted by a more general and broad definition of “information” and would need to remain in the legislation anyway. The clear added value of a general and broader definition here is far from obvious for CEEP members.

The last justification that the opportunity could be taken to include a reference to data protection also seems inappropriate as the provisions of the Data Protection Directive should automatically apply by virtue of its own regulatory scope.

There is no evidence that it would create a better situation with more standardisation of definitions at EU level. To be efficient, it would be better that EU regulation within the area of labour law takes

the form of broad general provisions. **Detailed regulation and one size fits all solutions – trying to streamline/standardise different questions and definitions are not appropriate in the area of labour law.**

It is good that the actual provisions are in three different directives today, **since the directives covers three very different situations** (general provision on I&C, transfers of undertakings and collective redundancies). The three directives require different things other than the provision of I&C – where would the rest of the provisions go if there was a consolidation? From a legal point of view, it is doubtful if it would make much sense to include them in an I&C directive. The Directive on transfers of undertakings, as an example, is more about the protection of transferred staff than the actual consultation provisions.

To consolidate the directives into one directive therefore seems inappropriate. Changes, a consolidation or a recast, would not clarify the situation, on the contrary, the risk would be high that it would blur and make the situation unclear, since the directives tackles very different things. **There is no apparent gain from changes of the current provisions.**

Issues relating to the scope of application of the EU Directives on I & C SMEs

CEEP welcomes the fact that the Commission does not aim at revising the thresholds.

Public administration

The Consultation Document does not provide convincing arguments to motivate the inclusion of public administration in the scope of any possible future joint Directive. Economic crisis, extensive organizational changes and closure of Government services as well as down-sizing or redundancies in the public sector are inappropriate and illogical reasons to initiate a review or a recast of the scope of I&C Directives at EU level.

Public administration varies significantly in Member States and is considerably more diverse in its nature and execution in terms of objectives and constraints when compared to governance of private businesses and companies. The Member States are at very different stages politically and have very different administrative arrangements. Indeed the definition of public administration varies greatly in different Member States. Furthermore, the public administration differs from the private businesses and companies, since being a part of the political system it's unavoidably attached to the political system. This is an issue therefore that should be handled at Member State level.

Member States have chosen different methods to balance I&C and need for direct democratic influence on the management of the public administrations. In some Member States the concept of political primacy is key for the functioning of public administration. A regulation at EU level is therefore at risk of being inadequate in this sector of government. Should the public administration be regulated by a future joint Directive it would require extensive exceptions and liberties for individual States.

In conclusion, it is entirely inappropriate to, in any manner or form, widen the scope of a new joint Directive on Information and Consultation (I&C) to include public administration.

Aim of the consultation

Do you consider the description of the issues in this paper correct and sufficient?

Yes, regarding the description in the parts telling that the three directives are fit for purpose.

Do you think that the Commission should launch an initiative to revise or recast the three Directives on I&C of workers at national level? If so, what should be its scope?

CEEP is convinced that such an initiative would be unnecessary and could complexify a situation where the existing tools are already fit for purpose.

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

No, not at this stage

In Summary

There is no need to change the current provisions in the three directives. Status Quo should be the preferred option. Following the motto “**Don’t try to mend what is not broken**”, there is no need for a consolidation/recast of the directives. It is also entirely inappropriate to, in any manner or form, widen the scope of a new joint Directive on Information and consultation (I&C) to include public administration.

If, in the future, the Commission would present a stronger case and identify clear weaknesses, then it would be more appropriate to make small individual amendments in each Directive where the failings are identified.