



**European Confederation of Independent  
Trade Unions (CESI)**

**Answer to the first-phase consultation of  
Social partners**

**on**

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**A consolidation of the EU Directives on  
information and consultation of workers**

EN

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**Confédération Européenne des Syndicats Indépendants**  
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*As a European umbrella organisation of trade unions and as a recognised social partner, CESI is committed to improve workers' rights and working conditions. Particularly dedicated to the protection of fundamental rights, such as the right to information and consultation, CESI is already actively engaged in negotiations within the Sectoral Social Dialogue Committee Central Government Administrations (SDC CGA) with representatives of employers to reach a binding agreement on the right to information and consultation of civil servants and employees in central administrations. CESI's particular interest for this important topic is also demonstrated by the fact that one of its annual symposiums, which took place this year on 25-26 June, was dedicated to this topic and generated fruitful debates and inputs for this consultation.<sup>1</sup>*

*In this context, CESI welcomes the consultation launched on 10 April 2015 by the European Commission, according to article 154(2) TFEU, to obtain the view of social partners on the possible direction of European action concerning a consolidation of the EU Directives on information and consultation of workers.<sup>2</sup> Therefore, besides the joint response provided by the Social Dialogue Committee CGA, CESI wishes to answer the following questions:*

### **1. Do you consider the description of the issues in this paper correct and sufficient?**

CESI considers the description of the issues to be in the overall correct but this could have been further specified and clarified.

CESI, which represents workers from both the public and private sector, welcomes the recognition that information and consultation, the fifth of the eleven fields of activities of the EU,<sup>3</sup> is a fundamental social right and that the directives - explicitly or implicitly - exclude the public sector from its scope of application. CESI considers however that the extent of the issue, namely the exclusion of public administrations from the scope of application, thus representing in 2010 more than 15 million European workers and comprising 7.2% of the EU28 workforce,<sup>4</sup> should have been better described and emphasised.

Moreover, as rightly underlined in the description, the fitness check “pointed out that more research is needed on the extent to which information and consultation rights are exercised in public administrations of the EU Members States, in particular in the context of public sector restructurings which are taking place in several countries.” CESI regrets that, based on article 153-

<sup>1</sup> CESI symposium: Better anticipate changes and restructuring in public administrations in Europe: the role played by the information and consultation of employees, <http://www.cesi.org/what-we-do/cesi-europe-academy/upcoming-projects/>. For more information on the presentations and debates, please see: <http://www.cesi.org/cesi-europe-academy-2015-action-needed-to-improve-restructuring-for-workers-in-public-administrations/>.

<sup>2</sup> Directive 98/59/EC on collective redundancies, Directive 2001/23/EC on transfers of undertakings (Article 7), and Directive 2002/14/EC establishing a general framework for informing and consulting employees.

<sup>3</sup> Article 153-1(e) of the Treaty on the functioning of the European Union (TFEU).

<sup>4</sup> Eurofound, *Public administration: Working conditions and job quality*, 2014, [http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1384en22.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1384en22.pdf).  
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2(a) of the Treaty on the functioning of the European Union (TFEU) no more work has been carried out since then, “improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences”. These would have namely greatly contributed to this debate and provided further evidence on how to proceed.

With regard to SMEs, CESI does not fully agree with the statement that “the decisive factor influencing social dialogue in small companies is the leadership and management culture of the company, rather than legal and other forms of regulation”. As shown by practices in some member states and a research carried out by Eurofound in 2014, social dialogue is also strongly influenced by (national) legislation. From a trade union perspective it is important to highlight this point to adequately protect workers, especially from arbitrary decisions of employers.

Finally, the envisaged approach foreseen by the Commission could have been better explained. The interchangeable use of the words *consolidation* and *recast* causes some confusion on the real nature of the project of the Commission, which seems to be from the beginning oriented towards a recast. This is in particular demonstrated by the initiative of the Commission to consolidate/recast the three Directives towards the end of the year through an ordinary legislative procedure, which was published on 11 June 2015, so before the end of this consultation.<sup>5</sup> Why does the Commission launch a consultation of the social partners if it has already decided how to proceed?

Notably, CESI does not understand why a targeted revision “could fall short of expectations in terms of clearer, simpler and more effective EU law”. On the contrary, as argued more in details below, CESI is convinced that this option is worth being examined.

## **2. 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?**

CESI is generally in favour of a more accessible and more transparent legislative framework. Furthermore, CESI agrees with the shortcomings found in the fitness-check, especially with regard to the personal scope of application and the exclusion of public administrations. These highlighted shortcomings definitely need to be addressed.

However, CESI does not think that a recast or consolidation of the three directives is the solution to the issues. Indeed, while the three directives all concern the right to information and consultation, they address different situations. CESI fears that a recast of the directives would affect these specificities and lead to an over-simplification of the directives which would lose in weight. Moreover, CESI does not believe that a recast will increase awareness, thus improve the protection and respect of the existing directives. On the contrary, CESI believes that a separate revision of the directives is better and preferable:

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<sup>5</sup> See initiative 2015/EMPL/007, page 18, available at: [http://ec.europa.eu/atwork/pdf/planned\\_commission\\_initiatives\\_2015.pdf](http://ec.europa.eu/atwork/pdf/planned_commission_initiatives_2015.pdf).  
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### a) Regarding the scope of application

While CESI recognises that the directives, which cover only the private sector, have been adopted at different times, CESI stresses the fact that today it is above all the public sector which is going through major reforms and restructurings - with important consequences for workers.<sup>6</sup>

Notwithstanding its already demonstrated benefits for both employees and employers,<sup>7</sup> as a fundamental social right and as an integral component of the European social model, the right to information and consultation should apply to everyone, regardless of the working sector.<sup>8</sup>

Moreover, even though a restricted application of the directives to administrations carrying out prerogatives of public powers might be under certain very limited circumstances justified, the per se exclusion of an entire sector (even more so when its determination is becoming increasingly difficult) is absolutely disproportionate and cannot be justified.

CESI is therefore in favour of the adoption of a binding agreement for civil servants and public employees, as currently being negotiated in the Social Dialogue Committee CGA (see answer to question 3). Nonetheless, if such an agreement cannot be reached in the end, CESI is in favour of an extension of the personal scope of application of the three directives to the public administration, recognising that workers of this sector have the same rights as other workers.

### b) Regarding the definitions

With regard to the terms information and consultation, CESI agrees that adopting a common and extensive definition would provide more clarity, consistency and legal security. CESI however wonders why the Commission refers to “unjustified regression of workers’ protection”, as no

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<sup>6</sup> According to a recent study, a higher share of public than private sector workers (41% v 35%, EU27) reported ‘substantial restructuring’ in the previous three years at their workplace. Indeed, around 800,000 job losses have been recorded in the public administration and much of the research on recent public sector restructuring finds that the decisions were not well prepared: the processes were carried out in a hasty manner, often not transparent and with limited consultation with the social partners including, in some cases, the employers. Most importantly, public sector restructuring measures leading to a reduction of public employees can have quite serious consequences for both the remaining staff (the levels of psychosocial risks in the public sector have significantly increased where restructuring has taken place) and the quality of services (as it is often the case, when overall demand in the economy declines, the need for many public services increases). Eurofound (2015), *ERM Annual report 2014: Restructuring in the public sector*.

<sup>7</sup> It is demonstrated that carefully planned and consultative restructuring processes can lead to relatively positive outcomes across many types of public sector activity and in various institutional settings. It can among others have positive effects on the solutioning of work problems, cost cuttings, the optimisation of work, performance, reputation and the establishment of a culture of trust between employers and employees. Eurofound (2015), *ERM Annual report 2014: Restructuring in the public sector*, p. 2.

<sup>8</sup> We must also recall that a few years ago the Commission therefore called on EU Member States to apply the Quality Framework on Restructuring (QFR) to the public sector, regardless of the nature, statutory or contractual, of their employment relationship. See COM(2013)882, final.  
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regression of worker's protection can ever be justified. CESI therefore recommends an alignment only based on the most favourable provisions' elements, i.e. the definition should be a mix of the European Works Councils definition already endorsed by European social partners (adding the component “in such time, in such fashion and with such content as...”) and the recognition that consultation may lead to an agreement (as recognised in the Directive 2002/14/EC, Directive 98/59/EC and Directive 2001/23/EC).

CESI also stresses the importance of time and appropriateness of information<sup>9</sup> which, as already mentioned in the 2002/14/EC directive, should “enable...employees' representatives to conduct an adequate study and, where necessary, prepare for consultation”.

Consultation should also happen “in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate”. CESI therefore suggests moving these inherent points - for now belonging to the article on “practical arrangements” which are left to the discretion of Member States - to the definition to ensure that they are always truly taken into account.

### c) Further suggestions

CESI recommends the addition of a reference to decent work and to corporate social responsibility (CSR) as defined by the ILO.

In addition, while the 2002/14/EC directive mentions four times the word “social dialogue”, it does not define it. CESI believes that adding a definition would reinforce its role and the prerequisite role played by information and consultation. It would also avoid that the different stakeholders gives it different meanings.<sup>10</sup>

In the same line, the actual definition of employees' representatives in the 2002/14/EC directive “provided for by national laws and/or practices” is vague and could be more specified. CESI therefore suggests to take the wording of the 89/391/EEC directive on the introduction of measures to encourage improvements in the safety and health of workers at work: “any person

<sup>9</sup> “In such time, in such fashion and with such content (...)”.

<sup>10</sup> As there is no unequivocal definition of social dialogue, CESI recommends using the ILO definition “to include all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. It can exist as a tripartite process, with the government as an official party to the dialogue or it may consist of bipartite relations only between labour and management (or trade unions and employers' organizations), with or without indirect government involvement. Social dialogue processes can be informal or institutionalised, and often it is a combination of the two. It can take place at the national, regional or at enterprise level. It can be inter-professional, sectoral or a combination of these. The main goal of social dialogue itself is to promote consensus building and democratic involvement among the main stakeholders in the world of work. Successful social dialogue structures and processes have the potential to resolve important economic and social issues, encourage good governance, advance social and industrial peace and stability and boost economic progress.” <http://www.ilo.org/ifpdial/areas-of-work/social-dialogue/lang--en/index.htm>.

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elected, chosen or designated in accordance with national laws and/ or practices to represent workers where problems arise relating to the safety and health protection of workers at work”. From a trade union perspective this would reinforce the legitimacy of representatives.

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

Following the invitation in the fitness check to discuss the issue “within the sectoral social dialogue committee which brings together central government administrations”,<sup>11</sup> the Social Dialogue Committee Central Government Administrations (SDC CGA), of which CESI is member through the TUNED delegation, has set in its work programme 2014-2015, the goal of examining information and consultation rights with a view to improving the social dialogue, in particular in situation of restructuring. The Committee is negotiating an agreement since November 2014 and, as said in its joint response to the consultation,<sup>12</sup> it “would give itself the means to achieve before the end of the year a legally-binding agreement, in accordance with Article 155, that defines a general framework for common minimum standards on rights to information and consultation taking into account national legal specificities.”

#### Who are we?

The European Confederation of Independent Trade Unions (CESI) is a European organisation, made up of trade union organisations from European Union Member States as well as accession states funded in 1990. With no political affiliations, CESI represents over 5 million affiliates, promoting better living and working conditions, as well as improving the European social dimension.

Representing 42 trade unions across the EU, CESI is a recognised European social partner and, in this capacity, is regularly consulted within the framework of social dialogue at European level.

#### For further information

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<sup>11</sup> SWD(2013) 293 final, p.37.

<sup>12</sup> <http://www.epsu.org/a/11485>.