

CEEMET Response to Social Partner consultation on a consolidation of the EU Directives on information and consultation of workers

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

We do not believe that the issues have been adequately and sufficiently described in the consultation paper and, furthermore, cannot support the premise of the consultation that there is a need for action to be considered at EU level.

The comprehensive Fitness check conducted in October 2012 concluded that all three directives are individually as well as collectively working well and clearly “fit for purpose”. There was no evidence of duplication or contradictions which gave rise to significant practical problems. However, the consultation indicates that company level stakeholders were more critical of the uncertainties, gaps and practical problems created by the three directives. The national social partners represented by CEEMET do not recognise these indications of uncertainties, gaps and practical problems. They have an alternative view, that if anyone is experiencing practical issues, their nature must be such that they can most effectively be dealt with by the social partners on national level and should not be suited to a solution at EU level in the form of legislative change.

Where there are difficulties caused by the three directives, they broadly fall into three categories. Some are caused by the form and style of national implementation and different national legal frameworks, culture and tradition, which any work at EU level may not address and could, in fact, further complicate. The second issue is caused by the decisions of the Court of Justice. The Court is immune from the likely potential achievements of this consultation and attempts at piecemeal changes are likely to add, not reduce complexity. The third cause of perceived difficulties with the three directives is as a result of their different backgrounds. They apply to fundamentally different situations, which account for the perceived differences encountered. Even if their drafting was at times sub-optimal due to the political landscape in which they were concluded, even minor changes on EU-level would cause a domino effect and huge adaptation requirements at national level, again causing frustration in the form of uncertainties.

It is, moreover, not clear what the objectives to be achieved are through the social partner consultation or through the potential partial consolidation of the three directives on information and consultation of workers, and most importantly, whether this will ultimately be of added value, or create further legal and practical complications.

CEEMET recognises that this consultation forms part of the European Commission’s wider REFIT agenda for smarter and better regulation, which CEEMET fully supports. We fully recognise that regulation derived from the European Union often present a considerable burden on Europe’s

businesses, and can have an adverse impact upon competitiveness and consequently contributes to poor growth.

In this case, however, CEEMET does not see any particular positive and substantial outcome that this exercise could achieve for the reasons described above. Even minor changes to the three directives will have a significant impact on national law and collective agreements on business, sector and national level. This again will create confusion, as the law whilst maybe imperfect is well understood, and any changes would bring a long period of uncertainty until the European Court of Justice and the national courts can provide a definitive interpretation of the law.

We therefore believe that better regulation should focus on reducing the burden of regulation upon the social partners and that the Commission should refrain from the REFIT exercise if the added value remains unclear. It is thus questionable whether this process should be prolonged, and whether it fits within the framework of REFIT at all.

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?

CEEMET does not see it necessary for the European Commission to open up any of the three directives, neither individually for revision nor collectively, at EU or national level, in any form of consolidation.

Member states have implemented the three directives in differing ways, in keeping with their national labour markets, legal framework, culture and traditions and thus frequently after consultation with, and with the support of, the social partners. It therefore seems ambitious of the Commission, now, to seek to intervene, and the prospects of success may therefore be poor.

Added to these perceived challenges is the continuing interpretation of the Court of Justice, national Courts and the settlement of collective agreements. The development of the three directives is therefore far from static, making any attempt at revision or recast across three continually changing directives particularly onerous.

If, in the event that the social partners are of the clear and collective view that some streamlining is of benefit, then there should be a clear and evidence based approach to how this could be achieved. Accepting that this is a first-stage social partner consultation, far greater analysis is needed before a number of potential options could be considered, ranging from a greater role for the social partners, to an initiative from some national Governments or guidance from the Commission that stakeholders on company level can use.

Attempts as recast and revision will inevitably result in, firstly, considerable delay whilst the process of consultation, impact assessment and consideration by the co-legislators takes place. Secondly, this will result in much uncertainty and is likely to give rise to a new wave of unpredictable decisions from the Court of Justice. In turn this will lead to greater business burden and cost, which the exercise is aimed at reducing. Thirdly, there is a risk of leveling up of procedures to the detriment of companies.

We therefore see no added value to employers who have managed to work with and apply the three directives to each different factual area which each of the three directives are intended for. CEEMET and its national member federations disagree with statement that “standardised definitions are likely

to render the application of EU law in this field easier and contribute to a more effective exercise of the rights and obligations of all actors concerned". Standardised definitions will create poorer regulation where they seek to cover highly differing national and transnational issues ill-suited to such attempts at uniformity. Consolidating these three directives at EU level would create an unpredictable situation with risks that would make it more complicated for both member states and social partners having to implement them.

With regard to the public sector, before considering about extending the scope to the public sector, it would be opportune to first thoroughly analyse and evaluate the differences between the private and sector employment conditions of each of the 28 EU member states.

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

No, for the reasons stated above. In the event that the Commission remains of the view that further work is desirable then this should take the form of better guidance produced with the agreement of national Governments and the social partners.