



OPINION

by the European Confederation of Independent Trade Unions

on the

**Commission green paper
“Modernising labour law to meet the challenges
of the 21st century”**

COM(2006)708

Rapporteur: Klaus Dauderstädt

Brussels, 30 March, 2007

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The European Confederation of Independent Trade Unions,

- given** the Commission green paper “Modernising labour law to meet the challenges of the 21st century”, COM(2006)708
- given** consultations held by the specialist committee “Employment and Social Affairs” on 27 March, 2007,
- given** Article 27.3 of CESI’s constitution, which allocates the adoption of all opinions and resolutions drafted by CESI to the Executive Board,
- given** Article 30.2 of CESI’s constitution, according to which the President, General Secretary and treasurer may take joint decisions in urgent cases,

adopted the following opinion on 30 March, 2007.

1. What would you consider to be the priorities for a meaningful labour law reform agenda?

CESI takes the view that the occasionally wide-ranging and above all one-sided dismantling of employee rights to satisfy the employers’ expectations on flexibility cannot continue apace. In particular, promises linked to such measures, such as more job security or the creation of more regular work, increasingly fail to materialise. At the same time, one can point to a growth in precarious employment relations, which is capable of doing lasting damage to social peace. Such observations give the lie to employers who claim that maximum flexibility, or worsening working conditions, are bound to create new jobs. Governments, as well as the EU, often present globalisation as a matter of course, which one must adapt to, but cannot avert. This is wrong, as such an attitude disregards the fact that any type of trade liberalisation was first either decided or tolerated by governments.

A labour market reform worthy of the name must once again engage more strongly with the actual purpose of labour law, i.e. to provide the right to employee protection. This means that there must continue to be a set of European minimum standards. In the final analysis, such standards are what it is worth working for at international level, if we want to avoid social dumping dictated by the mechanisms of globalisation and paid for by European workers.

Already today, minimum standards within the EU mean that economies, whilst still competing over wage levels, are not vying so much to see who can provide the worst working conditions. EU enlargements hitherto have shown that any advantage in salary costs from the newly-acceded economies soon faded in the face of increasing wealth and the salary expectations this ushered in. This is why minimum standards on



employee protection play a decisive role, at least in the medium term, in social cohesion in Europe. Indeed, for CESI, they are the crux of the “European Social Model”.

Concepts that can stem precarious employment relations in an effective way should therefore be a foremost priority. For this, there is definitely a need for a certain basic set of provisions which should be set at European level. The advantage here is that distortions in competition within Europe are in particular reduced through this. In order to counterbalance possible competitive advantages vis-à-vis other economic regions, CESI is in favour of resorting to other instruments. Europe must not use social dumping as a competitive weapon.

2. Can the adaptation of labour law and collective agreements contribute to improved flexibility and employment security and a reduction in labour market segmentation? If yes, then how?

Adapting labour law and collective agreements can without a doubt contribute to improved flexibility and employment security. However, what is often forgotten is that although flexibility initiatives over the last few years did strengthen competitiveness, they did not completely eradicate unemployment. The focal point must therefore be employment security, as this has been ever more eroded in recent years, whilst national labour law and collective agreements have already become significantly more flexible. Social minimum standards at European level thwart social dumping within Europe and can for this reason also counter market segmentation. However, CESI does not take the view that labour market segmentation *per se* should be called into question. Far more attention should be paid to making sure that enough quality jobs are available. It is true that the temporal nature of the work (for example, temporary or part-time) is basically a matter on which the employee is free to decide. However, we ought to frown upon an instance where a young person looking for stable full-time employment has to settle for precarious employment conditions, thus receiving neither enough pay nor adequate social protection. The uncertainty which such a situation creates in peoples’ daily lives runs directly counter to people deciding to start a family, and thus to us overcoming the challenge of demographic change. This is why industry is causing disquiet by restricting the debate, as can currently be observed, to a one-sided discussion on the flexibility of the potential parents of the children on which companies are banking for the future.

3. Do existing regulations, whether in the form of law and/or collective agreements, hinder or stimulate enterprises and employees seeking to avail of opportunities to increase productivity and adjust to the introduction of new technologies and changes linked to competition? How can improvements be



made in the quality of regulations affecting SMEs, while preserving their objectives?

CESI is of the view that existing regulations do not at any rate hinder companies exposing themselves to competition. Within Europe, they serve more, as mentioned earlier, to promote social cohesion and are thus also worth striving for across the world.

4. How might recruitment under permanent and temporary contracts be facilitated, whether by law or collective agreement, so as to allow for more flexibility within the framework of these contracts while ensuring adequate standards of employment security and social protection at the same time?

Introducing even more flexibility will lead to the disappearance of employment security. The Scandinavian flexicurity model is already based on employment security being almost completely surrendered in favour of a high level of social protection. However, whether or not this corresponds to the political will of the sovereign must, according to the prevailing allocation of competences contained in the EC Treaty, be decided at national level. Labour law and social protection systems are also far too varied for it to be possible to recommend such an approach as a ‘one-size fits all’ solution for the whole of Europe. CESI believes that one far greater obstacle to the creation of more jobs is often the high social contributions, which place a burden on salaries. In Scandinavia, a large share of the risks which are covered in other countries through social insurance is borne by the taxpayer, for example old-age provision. For this reason, the systems are not comparable.

Nevertheless, there is room to render things more flexible. For example, awarding fixed-term contracts could be linked to conditions which the employee can fulfil him/herself. Even if the entitlement to old-age provision became non-lapsable and was recognised from one employer to another, i.e. in the various Member States, this would contribute significantly to flexibility. In addition, clearer rules for ‘job-sharing’ should be aimed for, so that additional jobs can be created here.

5. Would it be useful to consider a combination of more flexible employment protection legislation and well-designed assistance to the unemployed, both in the form of income compensation (i.e. passive labour market policies) and active labour market policies?

In CESI’s view, decisions about employment protection are the very thing that ought exclusively to be taken at national level, in order to find a solution which fits and suits the various national labour and social laws and which works. In order to rule out



schematic solutions which are less suitable, it seems in any case vital to involve the social partners. At any rate, CESI rejects a one-sided dismantling of employment protection.

6. What role might law and/or collective agreements negotiated between the social partners play in promoting access to training and transitions between different contractual forms for upward mobility over the course of an active working life?

CESI welcomes a more active policy to promote access to training. However, the substance of such a policy should be shaped at national level. There may also be possibilities in the Member States actively to promote training policies which have not yet been fully exploited, such as, for example, the arrangements on apprenticeship pay against the obligation to take him/her on. However, it is important immediately to check the effectiveness of the tools to be applied to actively promote training. In this connection, what matters to CESI is that it be stressed once again that a worker who has successfully completed his/her training should, as a rule, be taken on.

7. Is greater clarity needed in Member States' legal definitions of employment and self-employment to facilitate *bona fide* transitions from employment to self-employment and *vice versa*?

The danger still remains in the Member States that young people make the move to self-employment in order to circumvent social contributions and that employers impose such conditions upon them. Some Member States have already tackled the problem of bogus self-employment with legislation and here as well, solutions ought chiefly to be found at national level. This said, it could be helpful if the process were initiated at European level, in order to stem bogus self-employment in an effective way.

8. Is there a need for a “floor of rights” dealing with the working conditions of all workers regardless of the form of their work contract? What, in your view, would be the impact of such minimum requirements on job creation as well as on the protection of workers?

CESI looks favourably on the present European line of passing minimum provisions in labour and social law. If certain minimum conditions apply for all in Europe, one can avoid an ultimate downward spiral in conditions. This applies within Europe, where competition ultimately boils down to wage costs and know-how, or quality of work.



However, the current set of instruments does not prevent products being produced which are assembled under far worse working conditions than is the case in Europe. They then compete with European products, ultimately leading to manufacturers also having to reduce the quality of working conditions if they want to remain competitive. As a consequence, CESI sees a great challenge lying in the EU making greater effort, via international agreements, to ensure that a certain level of labour conditions, such as the right to freely participate in trade union action, also forms part of the standards adhered to by its trading partners.

9. Do you think the responsibilities of the various parties within multiple employment relationships should be clarified to determine who is accountable for compliance with employment rights? Would subsidiary liability be an effective and feasible way to establish that responsibility in the case of sub-contractors? If not, do you see other ways to ensure adequate protection of workers in “three-way relationships”?

In the case of temporary work in particular, the European dimension is developing automatically, since some sectors now employ a large number of temporary staff, who also increasingly come from another European country. In this context, there can be no objection to temporary work, provided minimum standards are kept to. Nonetheless, a lack of clear responsibilities sometimes leads to it being difficult to determine who is accountable in the event of a conflict. This is why CESI supports the Commission’s intention to arrange the responsibilities in three-sided employment relations in a clearer fashion. A radical allocation of responsibility according to rank seems in this connection to be the most effective possibility of helping to bring about employee protection.

10. Is there a need to clarify the employment status of temporary agency workers?

CESI thus considers it logical to set out minimum provisions on the status of temporary workers within the European framework.

11. How could minimum requirements concerning the organization of working time be modified in order to provide greater flexibility for both employers and employees, while ensuring a high standard of protection of workers’ health and safety? What aspects of the organization of working time should be tackled as a matter of priority by the Community?



The current European directive and related jurisprudence provide a good basis when it comes to working time. CESI considers the existing level of protection to be largely sufficient and expressly advocates setting limits on current waivers, such as the individual opt-out, wherever this runs counter to the actual purpose of the directive. CESI is resolutely against efforts which can be observed in some Member States to extend the scope of the opt-out yet further.

The case law of the European Court of Justice on on-call time must also continue to be awarded consideration in a future version of the working time directive. For the purposes of clarity, the principles of the ECJ should be included in the text of the directive. In contrast, CESI welcomes the planned reorganisation of the reference period for cases when a person works more than the maximum weekly working time, as CESI takes a positive view of intelligent measures to create more flexibility to account for need and be family-friendly. This also includes for example 'life-course time accounts' where it is easy to exchange money for time or the other way around. This would be in the interests of employees and employers alike.

12. How can the employment rights of workers operating in a transnational context, including in particular frontier workers, be assured throughout the Community? Do you see a need for more convergent definitions of 'worker' in EU Directives in the interests of ensuring that these workers can exercise their employment rights, regardless of the Member State where they work? Or do you believe that Member States should retain their discretion in this matter?

A European arrangement also exists on the general working conditions of frontier workers, in order for example to make it easier for them to claim social insurance services or to safeguard these claims. However, in this connection CESI does not feel it is necessary to make the term 'worker' binding for all legal orders. Due to the variety of legal orders, this would probably be more likely to cause more confusion than provide the desired clarity.

13. Do you think it is necessary to reinforce administrative co-operation between the relevant authorities to boost their effectiveness in enforcing Community labour law? Do you see a role for social partners in such cooperation?

CESI thinks that closer cooperation between the Member States is overdue. Indeed, what is often lacking in Europe is not the legal bases, but rather often the efficient implementation of such bases. This applies in particular to the area of labour law and the interrelated international dimension. Here, CESI will play a constructive role as a recognized social partner. In this connection, it is of great importance that investment is



also made in the training and further training of those colleagues responsible for this cooperation.

14. Do you consider that further initiatives are needed at EU level to support action by the Member States to combat undeclared work?

Above and beyond the aforementioned enhanced cooperation between administrations, CESI does not feel any further initiatives are needed at present, at least not at European level. Most initiatives to tackle undeclared work should namely be provided, in CESI's view, at national level. As for the legal framework, it is necessary to address why people are tempted not to declare their work, i.e. the tax and contributions burden, which is felt to be excessive, even for those on low incomes. This has already been done in part, but there is a need for further action, especially when it comes to social contributions.

Brussels, 30 March, 2007

Valerio Salvatore
President

Helmut Müllers
General Secretary