

Contribution to the social partners' consultation on the Written Statement Directive

With this Position Paper, the World Employment Confederation-Europe aims to contribute to the EU Social Partners Consultation on the revision of the Written Statement Directive, offering comments on the better information on working conditions and the definition of a minimum floor of rights. Whereas the World Employment Confederation-Europe supports the approach to ensure better access to information on working conditions, the minimum floor of rights in the employment industry is already sufficiently defined at EU level.

23 June 2017

General assessments and comments

- When launching the debate on an EU Pillar of Social Rights, the European Commission aimed to start a broad discussion on whether the current EU *acquis communautaire* in the area of employment and social affairs is still appropriate and on how to enhance convergence in Europe. The World Employment Confederation-Europe is convinced that this discussion should better reflect the new reality of work.
- The draft European Pillar of Social Rights presented on 26 April includes 20 principles, while the EU Commission launched at the same time launching a social partners' consultation on the Written Statement Directive. This consultation includes two main dimensions, namely improved access to information on working conditions and the definition of a European floor of social rights. The concrete actions proposed under both dimensions of the consultation are of significant concern to the World Employment Confederation-Europe.
- The World Employment Confederation-Europe represents the employment industry at EU level, covering agency work, direct recruitment, career management, recruitment process outsourcing (RPO) and managed services provision (MSP). However, the EU Sectoral Social Dialogue between the World Employment Confederation-Europe and UNI Europa is limited to temporary agency work. As the consultation is addressed to Social Partners, the comments of the World Employment Confederation-Europe will focus mostly on the agency work activities of the employment industry.

Improved access to information on working conditions

- The World Employment Confederation-Europe supports the general concept of a better enforcement of the Written Statement Directive and of sufficient access to information on working conditions for workers. Information requirements should be proportionate and non-discriminatory.
- However, the employment industry has significant concerns regarding the intention to introduce a common definition of a worker and the extension of the information package covered.

Definition of a European minimum floor of rights

- A second objective in the consultation on the Written Statement Directive is the introduction of a European floor of minimum rights. For the agency work industry, such a minimum floor of rights is not needed, as it is largely already provided based on the Directive 2008/104/EC on temporary agency work.
- The World Employment Confederation-Europe does not see a need to revise the scope of the Written Statement Directive and to define core labour standards for all workers. Rather, existing Directives should have been better implemented and enforced. It would be better to follow a targeted approach for specific forms of work (if and when relevant and needed).

1. General Assessment

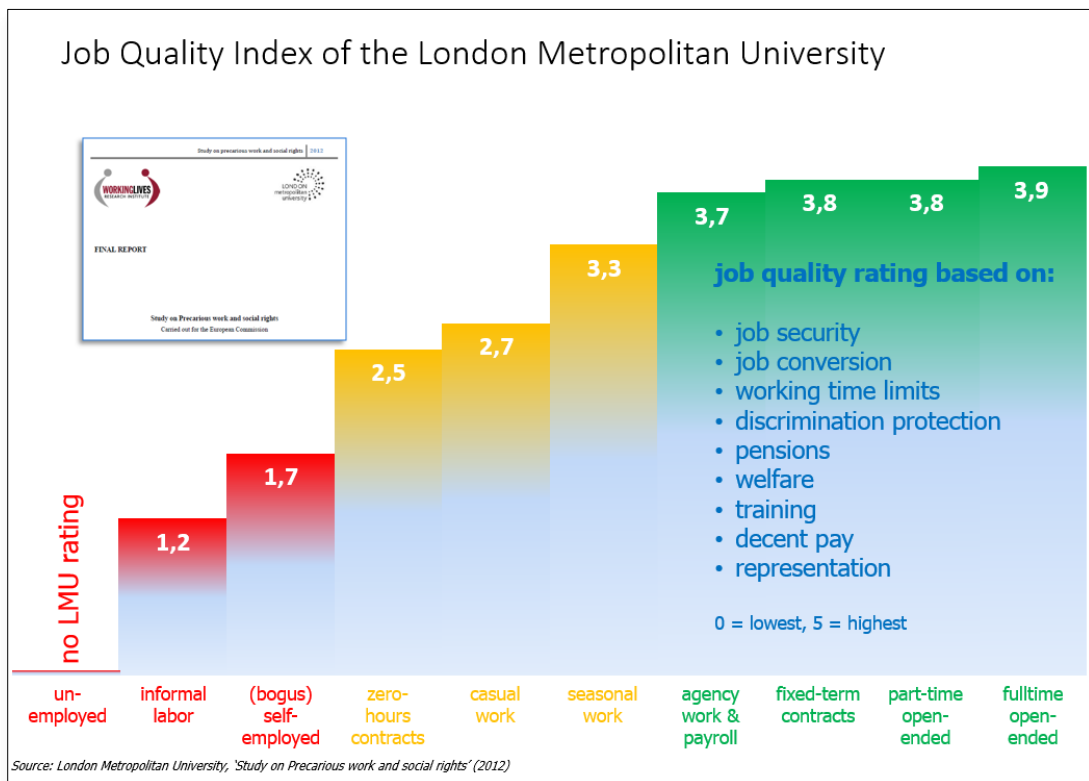
- 1.1. The World Employment Confederation-Europe welcomed the EU Social Partners' involvement up to the presentation of the Commission proposal for a European Pillar of Social Rights. The World Employment Confederation-Europe contributed to the stakeholder consultation and participated in several seminars and conferences linked to the European Pillar of Social Rights.
- 1.2. Complementary to this Position Paper, which provides the World Employment Confederation-Europe contribution to the consultation on the revision of the Written Statement Directive, the World Employment Confederation-Europe also issued position papers contributing to the consultation on access to social protection.
- 1.3. The World Employment Confederation-Europe is the voice of the employment industry, representing agency work, direct recruitment, career management, recruitment process outsourcing (RPO) and managed services provision (MSP). The EU Sectoral Social Dialogue of the World Employment Confederation-Europe with UNI-Europa is limited to agency work and thus this Position Paper, reacting to an EU social partners' consultation, is mainly focusing on the agency work industry.
- 1.4. The employment industry is an important actor on the European labour market, enabling work, adaptation, security and prosperity. 68.000 agencies with 276.000 HR specialists provide services and support around 11 million citizens on the labour market. 9 million of these are engaged in agency work (including via Managed Services Provision) and the agency work penetration rate in 2015 was 1.9% of the total workforce in Europe.
- 1.5. The World Employment Confederation-Europe welcomes the general EU discussion on appropriate labour market reforms and on creating futureproof labour markets. However, the World Employment Confederation-Europe does not agree to the basic statement and underlying strategy in the EU Commission Consultation document that transitions to open-ended contracts and forms of employment should be fostered. Labour market reforms that focus on promoting open-ended contract reflect a rather outdated vision of the labour market, which do not correspond to the increasing need for a diversity of labour contracts and forms of employment. Instead of promoting predominantly open-ended labour contracts, the need for a diversity of contracts and work arrangements should be recognised and promoted.
- 1.6. With regard to agency work as specific, triangular form of work, there is sufficient clarity on legal status and rights of agency workers based on the Directive 208/104/EC on temporary agency work. The World Employment Confederation-Europe calls for fully recognising and promoting triangular work relationships as a specific, but traditional form of employment, which provides adequate work security. It should be taken into account that agency work meets specific demands of both companies and workers, by enabling work, adaptation, prosperity and security.
- 1.7. To reflect on the broadening scope of services represented by the World Employment Confederation-Europe and to contribute to the debates at European and global level on the changing world of work, the World Employment Confederation-Europe published recently a White Paper on the Future of Work.¹ A key focus in this White Paper is laid on major trends such as globalisation, digitalisation and new work arrangements and the governance at work. In the White Paper, the World Employment Confederation-Europe has also put forward a set up policy recommendations to adapt labour markets to the changing world of work. It is in this context that the World Employment Confederation-Europe welcomes the conclusion in the consultation document that new forms of employment "offer opportunities for flexible working arrangements

¹ The White Paper is available on: www.changingworld.work and www.weceurope.org

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and integration into the labour market”.² In times of increasing digitalisation and “just in time” employment industry solutions, digital and online forms of a written statement should be fully recognised.

At the same time, the World Employment Confederation-Europe is strongly concerned by the reference to “precarious employment relationships” in the consultation document. The World Employment Confederation-Europe would like to underline that any form of work which is based on national law or collective labour agreements and therefore recognised at national level may not be classified as precarious. Diversity of contractual arrangements and forms of work should not be stigmatised, as these reflect the increased diversity of business and workers’ needs. Furthermore, and based on a research report of the London Metropolitan University (2012), it should be fully recognised that besides the full-time, open-ended employment contracts, also part-time, fixed-term and agency work contracts provide quality employment with an almost similar ranking in the job quality index.



1.8. Having assessed the Written Statement Directive, as well as other *acquis communautaire* in the field of employment and social affairs, the World Employment Confederation-Europe is convinced that there is no need for new EU regulation or for amending existing EU Directives. This assessment corresponds to the European Commission conclusion in the consultation document that “there is strong evidence that the Directive has been effective in reaching its objectives to a significant

² European Commission: Consultation Document of 26.4.2017: First phase consultation of Social Partners under Article 154 TFEU on a possible revision of the Written Statement Directive (Directive 91/533/EEC) in the framework of the European Pillar of Social Rights, page 4.

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extent.”³ Focus should be laid on the better implementation and enforcement of existing Directives in cooperation with Member States, thereby also addressing existing deficits.

1.9. With regard to the three specific questions addressed to EU Social Partners in the consultation document, the World Employment Confederation-Europe aims to provide the following key messages:

- **On the problem description:** The World Employment Confederation-Europe is convinced that the starting point of the discussion on the Written Statement Directive is not based on a modern and futureproof vision of the labour market and does not sufficiently reflect the changing world of work. Labour market policies need to adapt to this change, while keeping a balance between flexibility and security for companies and workers.

Open-ended and full-time labour contracts are not anymore the main and often not the most suitable way to provide work security, especially in a business environment where boundaries between different forms of employment (such as workers, self-employed and project workers) are increasingly blurring. Written contracts are becoming in some circumstances too rigid and precise and do not correspond to the new forms of work arrangements, especially when it comes to project-based organisations.

- **On the need for further legislation:** The World Employment Confederation-Europe does not see a need for further EU legislation in the field of the Written Statement Directive. The current Directive is sufficiently precise and covers the relevant elements. In an increasingly dynamic and fluent labour market, too rigid EU regulation on labour contracts written statements will hamper job creation, work mobility and business agility. Priority should be given to the adequate enforcement of the existing regulation in cooperation with the EU Member States.
- **On EU Social Partners’ negotiations:** Based on the above mentioned arguments, the World Employment Confederation-Europe does not intend to enter into negotiations with its EU Sectoral Social Partner UNI Europa on the Written Statement Directive. In addition to the general doubts on the need to revise this Directive, a sectoral approach covering mainly temporary agency work or the employment industry is neither relevant nor appropriate.

2. Better information on working conditions

2.1. The World Employment Confederation-Europe fully supports the aim to ensure access to information on working conditions, which is an important element for both companies and workers. Access to information must be provided in a transparent, effective and efficient way. The current provisions of the Written Statement Directive, especially in the information package in Article 2 provides the adequate and appropriate framework for ensuring access to the relevant information.

2.2. The World Employment Confederation does not see any need for a European definition of a worker in the Written Statement Directive. Firstly, as already mentioned in the introductory paragraph, a rigid and too detailed definition does not correspond anymore the modern and dynamic labour market, in which people on the labour market change their employment status

³ European Commission: Consultation Document of 26.4.2017: First phase consultation of Social Partners under Article 154 TFEU on a possible revision of the Written Statement Directive (Directive 91/533/EEC) in the framework of the European Pillar of Social Rights, page 6.

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more frequently (moving from being a worker to agency work, to self-employment or project work).

Secondly, in line with the principles of proportionality and subsidiarity, any EU legislation in the area of employment and social affairs should be limited to those common, minimum standards that are needed to ensure the protection of workers and the proper functioning of the free movement in the EU Single Market. An EU definition of a “worker” would not reflect the diversity of national labour market traditions and models and would infringe the principles of proportionality and subsidiarity.

Thirdly, for the specific case of temporary agency work, sufficient EU law is already established based on the Directive on temporary agency work, which provides in its Article 3, paragraph 1c a definition of the term ‘temporary agency worker’.

- 2.3. In the consultation document, the EU Commission also raises the question on the application of the Written Statement Directive to voucher-based works. In this context, the World Employment Confederation-Europe aims to highlight that some of its members do provide voucher-based employment solutions and that some of this national federations officially represent these forms of work, which is a useful tool to fight against undeclared work. Voucher-based work is a fairly recent and developing form of work and labour market intermediation. Voucher-based work and services to individuals has been established in 22 EU Member States. However, as voucher-based work does not fall under the scope of the EU Sectoral Social Dialogue on temporary agency work, the World Employment Confederation-Europe refrains from taking a formal position on this topic. On a more general level, the comments provided in the general assessment of section 1 are also relevant for voucher-based work.
- 2.4. The World Employment Confederation-Europe fully supports the access to information for workers on their basic employment and working conditions. However, the World Employment Confederation-Europe does not believe that there is a need to extend the information package to include further elements. Such an approach would hamper the development of new and flexible forms of work. In an increasingly dynamic labour market, in which workers are gaining more independence and autonomy with respect to their professional path, it does not seem appropriate to adopt too detailed and rigid EU norms in the field of employment and social affairs.
- 2.5. A further reform proposed in the Commission consultation document covers an obligation on Member States to make available “Written Statement Models or templates for employment contracts”. The World Employment Confederation-Europe does not believe that such models would be appropriate, as templates drafted by public authorities would have a rather static character and do not reflect the need to adapt constantly to changes that take place in the labour market. Furthermore, while the World Employment Confederation-Europe supports the principles currently included in the Written Statement Directive, offering template contracts would interfere too strongly into the contractual freedom of employers and workers.

3. Defining a minimum floor of workers’ rights

- 3.1. A second, key dimension on the Commission Consultation on the Written Statement Directive is the aim to define a minimum floor of workers’ rights at EU level, independent from the employment status.
- 3.2. The World Employment Confederation-Europe does not see any need to broaden the scope of the Written Statement Directive to cover also a minimum floor of workers’ rights.

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3.3. For temporary agency work, the minimum employment and working conditions are already sufficient and adequately defined at EU level based on the Directive 2008/104/EC on temporary agency work. This directive clearly defines temporary agency work and regulates basic employment and working conditions based on the principles of equal treatment and equal pay, including the options for derogations. As a specific EU Directive covering the sector of temporary agency work, this Directive should in any case have prerogative over a floor of rights defined through a revised Written Statement Directive.

In this context, it should also be recognised that the Directive 2008/104/EC has been an instrument of upwards convergence within the agency work industry in the past decade, based on new regulation that was adopted in the central and eastern European countries and via the principle of equal treatment, including the option for derogations. The Directive on temporary agency work clearly recognised that there is a need for a level-playing field, while there cannot be a "one-size-fits all" approach with regard to the employment and working conditions.

3.4. Any revision of the Written Statement Directive should also fully respect the fundamental rights as recognised in the Charter of Fundamental Rights of the European Union. A comparable approach has been taken in the EU Directive on temporary agency work, which fully recognises in Recital (1) the rights granted under the Charter of Fundamental Rights of the European Union.

3.5. Against this background, the World Employment Confederation-Europe does not believe that it is needed or appropriate to broaden the scope of the Written Statement Directive. Instead, in monitoring the application of existing EU instruments, the interrelation between the Written Statement Directive, the Directive on temporary agency work, fixed-term contracts and part time work should be monitored and assessed.

3.6. The World Employment Confederation-Europe is also strongly opposed to broadening the scope of the Written Statement Directive to other forms of work, which do not include an employment contract. Especially self-employed, as well as the rise of project-based work, are following a different rationale and are based on a different regulatory framework. These forms of work should therefore not be covered by the Written Statement Directive.

3.7. In a changing world of work, it can be questioned whether it is really relevant to have a broad, revised Directive trying to cover all forms of work, as this would imply that there is a "one-size fits all" approach for these matters.

3.8. A further argument against the definition of a static minimum floor of rights for all EU countries and all forms of work is that EU Directives and policies in the field of employment and social affairs should not hamper innovation and business development, but rather support a dynamic, adaptable and inclusive labour market. Too strict EU rules on written statements should instead be avoided and room should be given to social partners at European, national and sectoral level to develop tailor-made, adaptable solutions.

3.9. It should also be taken into account that the current legal basis of the Written Statement Directive is the former Article 100 of the EU Treaty establishing the European Communities. The article covered the EU economic policy, not minimum employment and working conditions. The legal basis was chosen at the time, as there was no legal basis for social and employment policy initiatives in the EC treaty at the time. If the scope of the Written Statement Directive is to be revised and its scope to be broadened to cover a minimum floor of rights, also the legal basis of the Directive would have to be changed to Social Policy, with implications for related decision-making procedures, thus requiring adoption by unanimity in Council in the context of the ordinary legislative procedure.

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- 3.10. In conclusion and focusing mainly on the employment and agency work industry, the World Employment Confederation-Europe does not see a need to define a minimum floor of rights in the Written Statement Directive.

About the World Employment Confederation–Europe: The World Employment Confederation-Europe is the voice of the employment industry at European level, representing labour market enablers.

With 30 countries and 7 of the largest international workforce solutions companies as members, the World Employment Confederation–Europe is fully representative of the industry, both in size and diversity. It brings a unique access to and engagement with European policymakers (EU Commission, European Parliament, and Council) and stakeholders (trade unions, academic world, think tanks).



The World Employment Confederation-Europe strives for a recognition of the economic and social role played by the industry in enabling work, adaptation, security and prosperity in our societies. Its members provide access to the labour market and meaningful work to more than 11 millions of people in Europe and serve around 1,5 million organisations on a yearly basis.