Opinion on the proposal for a Council Decision on the Protection of Young People at Work [1]

(92/C 313/19)

On 1 April 1992, the Council decided to consult the Economic and Social Committee, under Article 118A of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Social, Family, Educational and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion 10 September 1992. The Rapporteur was Mr van Dijk.

At its 299th Plenary Session (meeting of 24 September 1992) the Economic and Social Committee adopted the following Opinion by a large majority, with 28 votes against and 5 abstentions.

1. General comments

1.1. Subject to the points which follow, the Committee welcomes the proposal for a Council Directive, which generally conforms to the principles and provisions set out in the Social Charter (points 20 to 23) and to the views expressed by the Economic and Social Committee in its Opinions on Basic Community Social Rights and on the Organisation of Working Time [2].

1.2. The question of child labour and the need to protect the health and safety of young people at work have long been considered illustrative of the degree to which society is committed or not to civilised standards of well-being and to basic human rights. It is altogether appropriate, and not before time, that the European Community should endeavour to ensure basic EC-wide provisions in this field, respectful of the national authorities' role and prerogatives.

1.3. In attempting to strike a 'fair balance' between the 'definition of a basis of minimum (EC) provisions' and the 'necessary flexibility' required by Member States to pursue their own national employment practices and traditions (see 5th 'Whereas' and Article 3.3), the Commission has, however, introduced an excess of loopholes and derogations. The Committee would draw the Commission's attention to the fact that the ILO has drawn up standards in this regard which are sometimes stricter. The proposal should make it clear that national authorities are free to choose the form and methods for implementing the proposal and that more stringent national measures can be maintained or introduced; but this should not require the Commission to leave too many loose ends as regards the results to be achieved. Nor should there be any implicit condonation of 'traditional' forms of parallel or undeclared employment of children and adolescents, especially in the light of the Council Directive 91/533/EEC on contracts/employment relationship [3], applicable also to the employment of young people.

1.4. The Commission proposal might, on the other hand, stress a little more the benefits in terms of developing human resources. There can also be sound economic sense in banning child labour, investing much more in youth education and training, and having less recourse to premature and unskilled forms of precarious employment for young people. Today's youth is tomorrow's generation. Well-educated young people will mean a well-educated generation more capable of matching the changing needs of a modern European labour market.

1.5. At the same time, it is vital to address in unison the occupational health risks and accidents at work involving young people. The Committee is indeed alarmed that young people have twice as many accidents as adults during their first year of work, and that there is direct correlation between the number of site accidents and the skill level of young trainees [4]. It is likewise worrying to ponder the number of undeclared accidents and illnesses involving children working, or being forced to work, in the 'black economy', or in the grey zone of 'seasonal' or 'traditional' jobs and services. Closer monitoring by the Commission, more hard data from national authorities and tighter regulation in this area are all called for as an accompaniment to the proposed Directive.

1.6. The Committee assumes that the provisions of the proposed Directive do not conflict with compulsory education provisions in the Member States.

[1] OJ No C 84, 4. 4. 1992, p. 7.
[2] OJ No C 126, 26. 5. 1989 and OJ No C 60, 8. 3. 1991.
[3] OJ No L 288, 18. 10. 1991.
[4] See COM(91) 543 final — SYN 383, Explanatory Memorandum, point 7.

2. **Specific comments**

2.1. *Legal basis — Article 118a*

2.1.1. The subject matter and proposed Directive are indisputably about the working environment and health and safety at the work place. The legal basis proposed is therefore appropriate.

2.1.2. After the 2nd 'Whereas', concerning SMEs under paragraph 2 of Article 118a, it might also be useful to refer to paragraph 3 of the same Article in order to stress that Member States can maintain or introduce 'more stringent measures' than the minimum basis proposed for the protection of young people at work.

2.2. *9th 'Whereas'*

In addition to citing the Social Charter and then the resolution of the European Parliament, the Commission might also consider referring to the Economic and Social Committee Opinion on Basic Community Social Rights, which specifically addressed the question of child labour [1], and to the Opinion on the Organisation of Working Time, which called for an EC-wide ban on night working by young people [2].

2.3. *Article 1*

This Article stipulates that the Directive shall not apply to those working for their family. The Committee, however, takes the view that this limitation should not affect the provisions (Articles 5,6 and 7) in the fields of safety and health; those provisions of the Directive are indeed applicable to work of an economic kind for a family.

2.4. *Article 2*

2.4.1. In point (a), the Commission might usefully refer to the afore-mentioned Council Directive 91/533/EEC concerning an 'employment relationship'.

2.4.2. The definition of 'light work' under point (d) should be further clarified and tightened up, e.g. in relation to Article 3.2 (c). 'Light work' has not been adequately defined. It would be better to include in the Annex a comprehensive, but not exhaustive, list of activities which do not qualify as light work. The list could be amplified by case law, and by collective bargaining.

2.5. *Article 3*

2.5.1. The Committee welcomes the general objective in Article 3.2 to prohibit child work. Derogations should be the exception, not the rule.

2.5.2. Work-training schemes and apprenticeships, under 3.2 (b), require closer scrutiny in terms of health and safety and working conditions commensurate with age, especially for the significant number of dubious low-skilled or unskilled work experience placement schemes which some Member States have resorted to in order to 'reduce' official youth unemployment statistics. The Committee would again stress the need for quality training under better and safer conditions (jointly monitored for example by the social partners and by the appropriate authorities) in order to turn out young workers properly equipped to match the changing needs of a modern European labour market.

2.5.3. Children being able to perform 'light work' under Article 3.2 (c), needs to be looked into again in consideration of point 2.4.2 above. However, the minimum age laid down in Article 3.2(c) should be 14.

2.5.4. Article 3.3 of the Directive should be deleted. This can be done because Article 3.2(c) allows for children to perform 'light work'. As recommended in 2.4.2 above a negative list of activities which do not qualify as light work should be annexed to this Directive.

2.6. *Article 4*

The derogations allowed under Article 4 should be clarified, taking account of the frequency and duration of the activities. Moreover, the equivalent of the English term 'employment' (always meaning paid work) must be used in all language versions of the Directive.

2.7. *Article 5*

2.7.1. Amongst the work-related 'risks' indicated in Article 5.2, of which a 'non-exhaustive' list is set out in Annex I, the Commission should add that of young people being put at potential risk by having to work with, and handle, significant sums of money.

2.7.2. The Committee feels that young people should be fully informed as to the possible consequences of

(1) OJ No C 126 , 26. 5. 1989, op. cit., point IIIB, 8th indent.
(2) OJ No C 60, 8. 3. 1991, op. cit., point 1.13.

their work for their health and safety before they start work. This should be clarified beforehand, rather than being evaluated after the event.

Clarification as to how the Directive would apply is required as regards:

— an existing job formerly held by an adult and now to be occupied by a young person. A study must be carried out of the consequences for the young people's health and safety; this may be done on the basis of accumulated experience;

— an existing job already being done by a young person; Article 6 of the Directive applies;

— a new job to be done by a young person. A prior study must be carried out of the possible risks for young people.

2.8. *Article 6*

The exceptions allowed under the second part of this Article should be clarified. In the Committee's view they are only possible in the case of training agreements. Moreover, the expression 'essential' should be defined in order to meet the needs of vocational training. Provided that supervision and expert guidance are referred to, the Committee endorses this Article, although it is aware of the consequences for SMEs.

The medical surveillance referred to in Article 6.3 must be guaranteed for all young workers and not just for those exposed to risks, in order to avoid any possible effect on the health and development of young people.

2.9. *Article 7*

This Article should be redrafted as follows:

> ' Without prejudice to the provisions of Directives 80/1107/EEC and 91/322/EEC, young persons shall not be allowed to perform activities where the evaluation has revealed a risk of exposure to agents and procedures envisaged by Annex II which would put the young person's safety or physical or mental health in jeopardy.'

Account should also be taken of the young person's moral well-being.

2.10. *Article 8*

2.10.1. The Commission might note that three hours 'light work' plus the normal six hours of full-time compulsory education per day amounts to nine hours, one hour more than the ceiling proposed. The Committee in any case considers as excessive the three hours of 'light work', under Article 8.1, which young people who are in full-time education could be expected to perform on a school day. The proviso that this should not 'prejudice' their attendance or their capacity to benefit from school instruction is vague and weak (how does homework fit in for instance ?). The Article should also cover young people in training establishments. The total hours of attendance at school plus post-school work for young people may not exceed 8 hours a day and 40 hours a week.

2.10.2. Article 8.4 should be deleted.

2.10.3. A new paragraph should be added to Article 8 forbidding Sunday work by children and stipulating that young people may only work on Sundays under supervision and in accordance with school-apprenticeship agreements.

2.11. *Article 9*

The Committee considers ILO Conventions 79 and 90 preferable in approach to the current draft Commission text on night work of young persons. It would suggest that Article 9.1 be revised to read as follows:

> 'Without prejudice to the provisions of Article 4, children under 15 years of age (or adolescents if they are subject to full-time compulsory school attendance or training) shall not be employed or work at night during the 12 consecutive hours between 8 p.m. and 8 a.m. Adolescents between 15 and 18 years of age shall not be employed or work at night during the 8 consecutive hours between 10 p.m. and 6 a.m.'

Exceptions to this ban on night work should apply solely to adolescents, subject to the following conditions:

1. under compulsory training agreements;

2. the adolescents must be supervised.

However, there remains a total ban on work by adolescents between midnight and 4 a.m.

2.12. *Article 10*

Following the ILO example, the rest time for children under 15 years of age should be at least 14 consecutive hours during each 24-hour period. A rest time of 12 consecutive hours for adolescents between 15 and 18 years of age would seem reasonable.

2.13. *Article 12*

There is a need to distinguish between a 'rest period'

as such, after four and a half hours consecutive work, and a pause or interruption during the working period.

2.14. *Article 14*

The Committee considers that the sanctions envisaged for non-compliance with the Directive require closer definition and EC-wide scrutiny procedures, taking account of Articles 169 and 170 of the Treaty.

2.15. *Article 15*

Adjustments to Annexes I and II should also include revision along the lines suggested in point 2.7 above (Article 5).

Done at Brussels, 23 September 1992.

The Chairman

of the Economic and Social Committee

Michael GEUENICH

APPENDIX

to the Opinion of the Economic and Social Committee

The following amendment which received at least a quarter of the votes cast, was defeated during the discussion:

Delete entire Opinion and substitute:

'1. The Committee fully supports the Proposal from the Commission for the protection of young people from working and employment conditions which might damage their health, safety and development.

2. The Committee believes it to be of the utmost importance that the application of the proposed Directive should not inhibit established patterns of on-the-job training and apprenticeship for young people who have left school nor render unlawful part-time activities of relatively short duration traditionally undertaken by young people in their own neighbourhoods for reward. The range and diversity of these is such as to necessitate the ability for Member States to prescribe appropriate derogations from the operative provisions of the proposed Directive, in accordance with the principle of subsidiarity.

3. Accordingly the Committee welcomes the fact that the proposed Directive is drafted to reflect the substance of its fifth and fifteenth provisos. These call for a balance to be struck between minimum protection provisions and the necessary flexibility of employment and working conditions and suggest that derogations from the limitations imposed by the Directive are essential provided that they do not prejudice the underlying protective principles.'

Result of the vote

For: 38, against: 66, abstentions: 2.