



**Council of the European Union**  
General Secretariat

Brussels, 15 February 2019

**Mr Thomas HÄNDEL**

Chair, Employment and Social Affairs Committee

**Subject:** Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on transparent and predictable working conditions in the European Union

Dear Mr Thomas HÄNDEL,

Following the informal meetings between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty on the Functioning of the European Union (TFEU), in the same form set out in the compromise package contained in the Annex to this letter, subject to revision by the legal linguists of both institutions, the Council would, in accordance with Article 294, paragraph 4 TFEU, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on this dossier at first reading.

Yours sincerely,

**Mr Cosmin BOIANGIU**  
Chairman of the Permanent Representatives  
Committee (Part 1)

copy to: **Ms Marianne THYSSEN**, Commissioner  
**Mr Enrique CALVET CHAMBON**, EP Rapporteur

2017/0355 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on transparent and predictable working conditions in the European Union**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153(2)(b), *in conjunction with Article 153(1)(b)*, thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Charter of Fundamental Rights of the European Union provides in its Article 31 that every worker has the right to working conditions which respect his or her health, safety and dignity, and to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

***(1a) Principle 5 of the European Pillar of Social Rights, proclaimed at Gothenburg on 17 November 2017, provides that regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training, and that the transition towards open-ended forms of employment shall be fostered. It indicates that, in accordance with legislation and collective agreements, the necessary flexibility for employers to adapt swiftly to changes in the economic context shall be ensured. It further provides that innovative forms of work that ensure quality working conditions shall be fostered, that entrepreneurship and self-employment shall be encouraged and that occupational mobility shall be facilitated. It finally adds that employment relationships that lead to precarious working conditions shall be prevented, including by prohibiting abuse of atypical contracts, and that any probationary period should be of reasonable duration.***

**(2)** [replaced by 1a and 2a]

***(2a) Principle 7 of the European Pillar of Social Rights, provides that workers have the right to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship, including any probationary period. It also provides that prior to any dismissal they are entitled to be informed of the reasons and given a reasonable period of notice and that they have the right to access to effective and impartial dispute resolution and, in case of unjustified dismissal, a right to redress, including adequate compensation.***

- (3) Since the adoption of Council Directive 91/533/EEC,<sup>3</sup> labour markets have undergone far-reaching changes due to demographic developments and digitalisation leading to the creation of new forms of employment, which have supported *innovation*, job creation and labour market growth. New forms of employment *can vary significantly in their predictability from* traditional employment relationships [...], creating uncertainty *over* applicable rights and social protection *for the workers concerned*. In this evolving world of work, there is therefore an increased need for workers to be fully informed about their essential working conditions, which should occur in a *timely manner and in a* written form *easily accessible to workers*. In order adequately to frame the development of new forms of employment, workers in the Union should also be provided with a number of new minimum rights aimed at promoting security and predictability in employment relationships while achieving upward convergence across Member States and preserving labour market adaptability.
- (4) Pursuant to Directive 91/533/EEC the majority of workers in the Union have the right to receive written information about their working conditions. Directive 91/533/EEC does not however cover all workers in the Union. Moreover, gaps in protection have emerged for new forms of employment created as a result of labour market developments since 1991.
- (5) Minimum requirements relating to information on the essential aspects of the employment relationship and relating to working conditions that apply to every worker should therefore be established at Union level in order to guarantee all workers in the Union an adequate degree of transparency and predictability as regards their working conditions, *while maintaining reasonable flexibility of non-standard employment, thus preserving its benefits for workers and employers*.

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<sup>3</sup> Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288, 18.10.1991, p. 32).

- (6) The Commission has undertaken a two-phase consultation with the social partners, *in accordance with Article 154 of the Treaty on the Functioning of the European Union (TFEU)*, on the improvement of the scope and effectiveness of Directive 91/533/EEC and the broadening of its objectives in order to *establish* new rights for workers [...]. This did not result in any agreement among social partners to enter into negotiations on those matters. However, as confirmed by the outcome of the open public consultations carried out to seek the views of various stakeholders and citizens, it is important to take action at [...] Union level in this area by modernising and adapting the current legal framework *to new developments*.
- (7) [...] In its case law, the Court of Justice of the European Union has established criteria for determining the status of a worker<sup>4</sup> [...]. *The interpretation of the Court of Justice of these criteria should be taken into account in the implementation of this Directive.* Provided that they *fulfil* those criteria, domestic workers, on-demand workers, intermittent workers, voucher based-workers, platform workers, trainees and apprentices could come within scope of this Directive. *Genuinely self-employed persons should not fall under the scope of this Directive since they do not fulfil these criteria. The abuse of the status of self-employed persons, as defined in national law, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. Bogus self-employment occurs when a person is declared as self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations. Such persons should fall under the scope of this Directive. The determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of work and not on the basis of how the parties describe the relationship.*

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<sup>4</sup> Judgments of 3 July 1986, Deborah Lawrie-Blum, Case 66/85; 14 October 2010, Union Syndicale Solidaires Isère, Case C-428/09; 9 July 2015, Balkaya, Case C-229/14; 4 December 2014, FNV Kunsten, Case C-413/13; and 17 November 2016, Ruhrlandklinik, Case C-216/15.

- (7a) *It should be possible for Member States to provide, where justified on objective grounds, that certain provisions of this Directive are not to apply to certain categories of civil servants, public emergency services, the armed forces, police authorities, judges, prosecutors, investigators and other law enforcement services, given the specific nature of the duties that they are called on to perform or of their employment conditions.*
- (7b) *The requirements on employment in parallel, where incompatible with the work performed on board ships or fishing vessels, the requirements on minimum predictability of work, the requirements on workers sent in another Member State or third country, the requirements on transition to another form of employment and the requirement on providing information on the identity of the social security institution(s) receiving the social contributions should not apply to seafarers and sea fishermen given the specificities of their employment conditions. For the purposes of this Directive, seafarers and fishermen as defined in Council Directives 2009/13/EC and 2017/159/EU, respectively, should be considered as working in the Union when they work on board ships or fishing vessels, respectively, registered in a Member State and/or flying the flag of a Member State.*
- (8) In view of the increasing number of workers excluded from the scope of Directive 91/533/EEC on the basis of *exclusions* made by Member States under Article 1 of that Directive, it is necessary to replace *those* derogations with a possibility for Member States not to apply the provisions of the Directive to a work relationship equal to or less than [...] *3 hours per week in a reference period of four consecutive weeks. The calculation of these hours should include all time actually worked for an employer, such as overtime or work in addition to that guaranteed or anticipated in an employment contract or relationship. Once a worker has passed this threshold, the provisions of this Directive will then apply to him or her, from that moment on, regardless of the hours subsequently worked or the hours stated in the contract.*
- (9) [...] *Workers with no guaranteed working time, including those on zero-hour and some on-demand contracts, are in a particularly vulnerable situation. Therefore, the provisions of the Directive should apply to them, whatever the numbers of hours they actually work.*

- (10) Several different natural or legal persons *or other entities* may in practice assume the functions and responsibilities of an employer. Member States should remain free to determine more precisely the person(s) who are considered totally or partially responsible for the execution of the obligations that this Directive lays down for employers, as long as all those obligations are fulfilled. Member States should also be able to decide that some or all of these obligations are to be assigned to a natural or legal person who is not party to the employment relationship.
- (10a) Member States should be able to establish specific rules to exclude individuals acting as employers for domestic workers in the household from the *requirements laid down in this Directive*, to consider and respond to *requests* for [...] different *types* of employment, to provide cost-free mandatory training, and [...] *to provide for* redress *mechanisms* based on favourable presumptions in the case of missing information in the *documentation that is to be provided to the worker under this Directive*.
- (11) Directive 91/533/EEC introduced a [...] list of essential aspects *of the employment contract or employment relationship of* which workers have to be informed in writing. It is necessary to adapt that list, *which Member States can enlarge*, in order to take account of developments on the labour market, in particular the growth of non-standard forms of employment.
- (-11a) *Where the worker has no fixed or main place of work, he or she should receive information about arrangements in place, if any, to travel between the workplaces.*
- (11a) *It should be possible for information on the training entitlement provided by the employer to take the form of information that includes the number of training days per year, if any, to which the worker is entitled and information about the employer's general training policy.*

- (11b) *Information on the procedure to be observed by the employer and the worker if their employment relationship is terminated should be able to include the length of the period for bringing an action contesting dismissal.*
- (12) Information on working time should be consistent with the provisions of Directive 2003/88/EC of the European Parliament and of the Council,<sup>5</sup> and include information on breaks, daily rest, weekly rest and the amount of paid leave, *thereby ensuring protection of the safety and health of workers.*
- (13) Information on remuneration to be provided should include all elements of the remuneration, including, *if applicable*, contributions in cash or kind, *overtime payments, bonuses and other entitlements*, directly or indirectly received by the worker in respect of his or her work. The provision of such information should be without prejudice to the freedom for employers to provide for additional elements of remuneration such as one-off payments. The fact that elements of remuneration due by law or collective agreement have not been included in that information should not constitute a reason for not providing them to the worker.
- (14) If it is not possible to indicate a fixed work schedule due to the nature of the employment, *such as an on-demand contract*, workers should *be informed by their employer* how their *working time* will be established, including the time slots in which they may be called to work and the minimum *period of* advance notice they should receive *before the start of a work assignment.*

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<sup>5</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9).

- (15) Information on social security systems should include *information on the identity of the social security institution(s) receiving the social security contributions on*, where relevant, sickness, maternity, *paternity* and [...] parental [...] *benefits, accident at work and occupational diseases benefits, and* old-age, invalidity, survivors', unemployment, pre-retirement *and* family benefits. *Employers should not be required to provide this information where the choice of institution is made by the worker.* Information on *the social security protection provided by the employer should include, where relevant, the fact of coverage by supplementary pension schemes within the meaning of Council Directive 98/49/EC<sup>6</sup> and Directive 2014/50/EU of the European Parliament and of the Council<sup>7</sup>.*
- (16) Workers should have the right to be informed about their rights and obligations resulting from the employment relationship in writing at the start of employment. [...] *The basic information should therefore reach them as soon as possible and at the latest within a calendar week from the first working day. The rest of the information should reach them within one month from the first working day. The first working day should be understood as the actual start of performance of work by the worker in the employment relationship. Member States should aim at having the relevant information on the employment relationship provided by the employers before the end of the initially agreed duration of the contract.*
- (16a) *With regard to the increasing use of digital communication tools, where this Directive refers to information to be provided in writing, this could take an electronic form.*

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<sup>6</sup> Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community (OJ L 209, 25.7.1998, p. 46).

<sup>7</sup> Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights (OJ L 128, 30.4.2014, p. 1).

- (17) In order to help employers to provide timely information, Member States should ***be able to provide*** templates at national level including relevant and sufficiently comprehensive information on the legal framework applicable. ***Those*** templates ***could*** be further developed at sectoral or local level, by national authorities and ***the*** social partners. ***The Commission will support Member States in developing templates and models and make them widely available, as appropriate.***
- (18) Workers [...] sent abroad should receive additional information specific to their situation. For successive work assignments in several Member States or third countries, [...] ***it should be possible for*** that information ***to*** be grouped for several assignments before the first departure and subsequently modified in case of change. Where they qualify as posted workers under Directive 96/71/EC of the European Parliament and of the Council<sup>8</sup>, they should also be notified of the single national website developed by the host Member State where they will find the relevant information on the working conditions applying to their situation. Unless Member States provide otherwise, ***those*** obligations apply if the duration of the work period abroad is more than four consecutive weeks.
- (19) Probationary periods allow [...] ***the parties to the employment relationship*** to verify that ***the*** workers [...] ***and*** the ***positions*** for which they ***were*** engaged ***are compatible*** while providing ***workers*** with accompanying support [...]. Any entry into the labour market or transition to a new position should not be subject to prolonged insecurity. As established in the European Pillar of Social Rights, probationary periods should therefore be of reasonable duration.

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<sup>8</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

- (19a) A substantial number of Member States have established a general maximum duration of probation *of* between three and six months, which should be considered reasonable. *Exceptionally, it should be possible for probationary periods to last* longer than six months where this is justified by the nature of the employment such as for managerial *or executive* positions *or public service positions or* where this is in the interest of the worker, such as in the [...] context of specific measures promoting permanent employment notably for young workers. *It should also be possible for probationary periods to be extended correspondingly in cases where the worker has been absent from work during the probationary period, for instance due to sickness or leave, to enable the employer to verify the suitability of the worker for the task in question. In the case of fixed-term employment relationships of less than 12 months, Member States should ensure that the length of the probationary period is adequate and proportionate to the expected duration of the contract and the nature or work. Where provided for in national law or practice, the probationary period should be counted towards the accrual of employment rights.*
- (20) Employers should not prohibit *a worker* from taking up employment with other employers, outside the time spent working for them, *or subject a worker to adverse treatment for doing so. It should be possible for Member States to lay down conditions for the use of [...] incompatibility restrictions, which are to be* understood as *restrictions* on working for [...] *other* employers [...] for objective reasons, such as the protection of *the health and safety of workers including by limits to working time, the protection of* business [...] *confidentiality, the integrity of the public service* or the avoidance of conflicts of interests.
- (21) Workers whose work *pattern* is *entirely or* mostly *not predictable* should benefit from a minimum *level of* predictability [...] where the work schedule is mainly determined by the employer, be it directly, for instance by allocating work assignments, or indirectly, for instance by requiring the worker to respond to clients' requests.
- (22) Reference hours and days, understood as time slots where work can take place at the request of the employer, should be established in writing at the start of the employment relationship.

- (23) A reasonable minimum advance notice, understood as the period of time between the moment a worker is informed about a new work assignment and the moment the assignment starts, constitutes another necessary element of predictability of work for employment relationships with work *patterns* which are *entirely* or mostly [...] *not predictable*. The length of the advance notice period may vary according to the needs of *the sector concerned*, while ensuring *the* adequate protection of workers. *That period* applies without prejudice to Directive 2002/15/EC of the European Parliament and of the Council.<sup>9</sup>
- (24) Workers should have the possibility to refuse a work assignment if it falls outside [...] the reference hours and days or *the worker* has not been notified within the minimum advance notice *period* without suffering adverse consequences for this refusal. Workers should also have the possibility to accept the work assignment if they so wish.
- (24a) *Where a worker whose work pattern is entirely or mostly not predictable has agreed with his or her employer to undertake a specific work assignment, the worker should be able to plan accordingly. The worker should be protected against loss of income resulting from late cancellation of the agreed work assignment, by receiving adequate compensation.*
- (24b) *On-demand or similar employment contracts, including zero hour contracts, under which the employer has the flexibility of calling the worker to work as and when needed, are particularly unpredictable for the worker. Those Member States allowing for such contracts should ensure that effective measures to prevent their abuse are in place. Such measures could take the form of limitations to the use and duration of such contracts, of a rebuttable presumption of the existence of an employment contract or relationship with a guaranteed amount of paid hours based on hours worked in a preceding reference period, or of other equivalent measures that ensure effective prevention of abusive practices.*

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<sup>9</sup> Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35).

- (25) Where employers have the possibility to offer full-time or open-ended labour contracts to workers in non-standard forms of employment, a transition to more secure forms of employment should be promoted *in line with the principles established in the European Pillar of Social Rights*. Workers should be able to request another more predictable and secure form of employment, where available, and receive a *reasoned* written response from the employer, which takes into account the needs of the employer and of the worker. *Member States should have the possibility to limit the frequency of such requests. This Directive should not prevent Member States from establishing that, in the case of public service positions for which entry is by competitive examination, those positions are not to be considered as available on the simple request of the worker, and so fall outside the scope of the right to request a form of employment with more transparent and predictable working conditions.*
- (26) Where employers are required by *Union or national law* or collective agreements to provide training to workers to carry out the work for which they are employed, it is important to ensure that such training is provided equally *to all workers*, including to those in non-standard forms of employment. The costs of such training should not be charged to the worker *or withheld or deducted from the worker's remuneration. Such training should count as working time and, where possible, be carried out during working hours. This obligation does not cover vocational training or training required for workers to obtain, maintain or renew a professional qualification as long as the employer is not required by Union or national law or collective agreement to provide it to the worker. Member States should take the necessary measures to protect workers from abusive practices regarding training.*
- (27) *The autonomy of the social partners and their capacity as representatives of workers and employers should be respected. It should therefore be possible for social partners to consider that in specific sectors or situations different provisions are more appropriate, for the pursuit of the purpose of this Directive, than certain minimum standards set in [...] this Directive. Member States should therefore be able to allow social partners to maintain, negotiate, conclude and enforce collective agreements which differ from certain provisions contained in this Directive, provided that the overall level of protection of workers is not lowered.*

- (28) The *public* consultation on the European Pillar of Social Rights showed the need to strengthen enforcement of Union labour law to ensure its effectiveness. *The evaluation of Directive 91/533/EEC conducted under the Commission's Regulatory Fitness and Performance Programme* confirmed that strengthened enforcement mechanisms could improve *the effectiveness of Union labour law*. *The consultation* showed that redress systems based solely on claims for damages are less effective than systems that also provide for *penalties*, such as lump sums or loss of permits), for employers who fail to issue written statements. It also showed that employees rarely seek redress during the employment relationship, which jeopardises the goal of the provision of the written statement, *which is* to ensure *that* workers are informed about *the* essential features of *the* employment relationship. It is therefore necessary to introduce enforcement provisions which ensure the use [...] of favourable presumptions where information about the employment relationship is not provided, *and/or of a* procedure under which the employer may be required to provide the missing information and *may be* subject to sanction if *the employer* does not *do so*. *Such favourable presumptions could include a presumption that the worker has an open-ended employment relationship, that there is no probationary period or that the worker has a full-time position, where the respective information is missing. Redress could* be subject to a procedure by which the employer is notified *by the worker or by a third party such as a worker's representative or other competent authority or body* that information is missing and [...] to supply complete and correct information *in a timely manner*.
- (29) An extensive system of enforcement provisions for the social acquis in the Union has been adopted since Directive 91/533/EEC, notably in the fields of [...] equal *treatment*, elements of which should be applied to this Directive in order to ensure that workers have access to effective and impartial dispute resolution, *such as a civil or labour court*, and a right to redress, *which may include* adequate compensation, reflecting the Principle 7 of the European Pillar of Social Rights.

- (30) Specifically, having regard to the fundamental nature of the right to effective legal protection, workers should continue to enjoy such protection even after the end of the employment relationship giving rise to an alleged breach of the worker's rights under this Directive.
- (31) The effective implementation of this Directive requires adequate judicial and administrative protection against any adverse treatment as a reaction to an attempt to exercise rights provided for under this Directive, any complaint *to* the employer or any legal or administrative proceedings aimed at enforcing compliance with this Directive.
- (32) Workers exercising rights provided for in this Directive should enjoy protection from dismissal or equivalent detriment, such as an on-demand worker no longer being assigned work, or any preparations for a possible dismissal, on the grounds that they sought to exercise such rights. Where workers consider that they have been dismissed or have suffered equivalent detriment on those grounds, workers and competent authorities *or bodies* should be able to require the employer to provide duly substantiated grounds for the dismissal or equivalent measure.
- (33) The burden of **proving** that there has been no dismissal or equivalent detriment on the grounds that workers have exercised their rights provided for in this Directive, should fall on employers when workers establish, before a court or other competent authority *or body*, facts from which it may be presumed that they have been dismissed, or have been subject to measures with equivalent effect, on such grounds. *It should be possible for Member States not to apply this rule in proceedings, in which it would be for a court or other competent authority or body to investigate the facts, in particular in systems where dismissal has to be approved beforehand by such authority or body.*
- (34) Member States should provide for effective, proportionate and dissuasive penalties for breaches of the obligations under this Directive. *Penalties can include administrative and financial sanctions, such as fines or the payment of compensation, as well as other types of sanctions.*

- (35) Since the objectives of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of the need to establish common minimum requirements, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (36) This Directive lays down minimum requirements, thus leaving untouched Member States' prerogative to introduce and maintain more favourable provisions. Rights acquired under the existing legal framework should continue to apply, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights set out in existing national or Union legislation in this field, nor can it constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this Directive. *In particular, it should not serve as grounds for the introduction of zero-hour contracts or similar types of employment contracts.*
- (37) In implementing this Directive Member States should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of *micro*, small and medium-sized *enterprises*. Member States are therefore invited to assess the impact of their transposition act on *small and medium-sized enterprises* in order to make sure that *they* are not disproportionately affected, *giving* specific attention *to* micro-enterprises and *to the* administrative burden, and to publish the results of such assessments.
- (38) The Member States may entrust *the* social partners with the implementation of this Directive, where *the* social partners jointly request to do so and *provided that* the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive. *They should also, in accordance with their national law and practice, take adequate measures to ensure the effective involvement of the social partners and to promote and enhance social dialogue with a view to implementing the provisions of this Directive.*
- (38a) *Member States should take any adequate measure to ensure fulfilment of the obligations arising from this Directive, for example by carrying out inspections as appropriate.*

- (39) In view of the substantial changes introduced by this Directive at the level of purpose, scope and content, it is not appropriate to amend Directive 91/533/EEC. Directive 91/533/EEC should therefore be repealed.
- (40) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents,<sup>10</sup> Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

## Chapter I

### General provisions

#### *Article 1*

##### *Purpose, subject matter and scope*

1. The purpose of this Directive is to improve working conditions by promoting more ***transparent*** and predictable employment while ensuring labour market adaptability.
2. This Directive lays down minimum rights that apply to every worker in the Union, ***who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State with consideration to the case-law of the Court of Justice of the European Union.***
3. Member States may decide not to apply the obligations in this Directive to workers who have an employment relationship ***with predetermined and actual time worked*** equal to or less than ***three*** hours ***per week on average*** in a reference period of ***four consecutive weeks***. Time worked with all employers forming or belonging to the same enterprise, group or entity shall count towards that ***three-hour average***.

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<sup>10</sup> OJ C 369, 17.12.2011, p. 14.

4. Paragraph 3 shall not apply to an employment relationship where no guaranteed amount of paid work is predetermined before the employment starts.
5. Member States may determine which persons are responsible for the execution of the obligations for employers laid down by this Directive as long as all those obligations are fulfilled. They may also decide that all or part of *those* obligations **are to** be assigned to a natural or legal person who is not party to the employment relationship. This paragraph is without prejudice to Directive 2008/104/EC **of the European Parliament and of the Council**<sup>11</sup>.
- 5a. **Member States may provide, on objective grounds, that the provisions laid down in Chapter III shall not apply to civil servants, public emergency services, the armed forces, and to police authorities, judges, prosecutors, investigators and other law enforcement services.**
6. Member States may decide not to apply the obligations set out in Articles 10 and 11 and Article **14(1)(a)** to natural persons **in households acting as employers** where work is performed for **those households**.
7. Chapter II of this Directive applies to seafarers and **sea** fishermen without prejudice to Council Directive 2009/13/EC<sup>12</sup> and Council Directive (EU) 2017/159<sup>13</sup>, respectively. **The obligations set out in Articles 3(2)(l) and (n), 6, 8, 9 and 10 shall not apply to seafarers and sea fishermen.**

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<sup>11</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).

<sup>12</sup> Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC (OJ L 124, 20.5.2009, p. 30).

<sup>13</sup> Council Directive (EU) 2017/159 of 19 December 2016 implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche) (OJ L25, 31.1.2017, p. 12).

*Article 2*  
*Definitions*

1. For the purposes of this Directive, the following definitions [...] apply:
  - (a) *[deleted]*
  - (b) *[deleted]*
  - (c) *[deleted]*
  - (d) 'work schedule' means the schedule determining *the* hours and days on which performance of work starts and ends;
  - (e) 'reference hours and days' means time slots in specified days during which work can take place at the request of the employer;
  - (ea) *'work pattern' means the form of organization of the working time and its distribution according to a certain pattern determined by the employer.*
2. *[deleted]*

*Article 2a*  
*Provision of information*

*The employer shall provide each worker with information required pursuant to this Directive in writing. The information shall be provided and transmitted on paper or, provided that it is accessible by the worker, can be stored and printed, and the employer retains proof of transmission or reception, in electronic form.*

## Chapter II

### Information on the employment relationship

#### *Article 3*

#### *Obligation to provide information*

1. Member States shall ensure that employers are required to inform workers of the essential aspects of the employment relationship.
2. The information referred to in paragraph 1 shall include ***at least the following***:
  - (a) the identities of the parties to the employment relationship;
  - (b) the place of work; where there is no fixed or main place of work, the principle that the worker is employed at various places or is free to determine his or her place of work, and the registered place of business or, where appropriate, the domicile of the employer;
  - (c) (i) the title, grade, nature or category of [...] work for which the worker is employed;  
or  
(ii) a brief specification or description of the work;
  - (d) the date of commencement of the employment relationship;
  - (e) in the case of a temporary employment relationship, the end date or the expected duration thereof;
  - (ea) ***in the case of temporary agency workers, the identity of the user undertakings, when and as soon as known***;
  - (f) the duration and conditions of the probationary period, if any;
  - (g) ***the*** training entitlement provided by the employer, ***if any***;

- (h) the amount of paid leave to which the worker is entitled or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;
- (i) the procedure, including the *formal requirements and the* length of [...] notice *periods* to be observed by the employer and the worker *if* their employment relationship *is* terminated or, where the length of the [...] notice *periods* cannot be indicated when the information is given, the method for determining such [...] notice *periods*;
- (j) *the remuneration, including* the initial basic amount, any other component elements, *if applicable, indicated separately*, the frequency and method of payment of the remuneration to which the worker is entitled;
- (k) if the work *pattern* is entirely or mostly *predictable*, the length of the worker's standard working day or week and any arrangements for overtime and its remuneration *and, where applicable, for shift changes*;
- (l) if the work *pattern* is entirely or mostly *not predictable, the employer shall inform the worker about*:
  - (i) the principle that the work schedule is variable, the *number* of guaranteed paid hours *and* the remuneration *for* work performed in addition to *those* guaranteed hours;
  - (ia) *the reference hours and days within which the worker may be required to work*;
  - (ii) the minimum *period of* advance notice the worker shall receive before the start of a work assignment *and, where applicable, the deadline for cancellation referred to in Article 9*;

- (m) any collective agreements governing the worker's conditions of work *or* in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of the competent body or joint institution within which the agreements were concluded;
  - (n) *where it is the responsibility of the employer, the identity of* the social security institution(s) receiving the social contributions attached to the employment relationship and any protection relating to social security provided by the employer.
3. The information referred to in paragraph 2(f) to (k) and (n) may, where appropriate, be given in the form of a reference to the laws, regulations and administrative or statutory provisions or collective agreements governing those particular points.

#### *Article 4*

##### *Timing and means of information*

1. ***Where not previously provided, the information referred to in Article 3(2) (a), (b), (c), (d), (e), (f), (j), (k) and (l) shall be provided individually to the worker in the form of one or more documents during the period between the first working day and no later than the seventh calendar day. The other*** information referred to in Article 3(2) shall be provided individually to the worker in the form of a document [...] ***within one month from the first working day.***
2. Member States *may* develop templates and models for the document(s) referred in paragraph 1 and put them at the disposal of *worker* and *employer* including by making them available on a single official national website *or* by other suitable means.
3. Member States shall ensure that the information on the laws, regulations and administrative or statutory provisions or ***universally applicable*** collective agreements governing the legal framework applicable which are to be communicated by employers is made generally available free of charge in a clear, transparent, comprehensive and easily accessible way at a distance and by electronic means, including through existing online portals [...].

## Article 5

### *Modification of the employment relationship*

1. Member States shall ensure that any change in the aspects of the employment relationship referred to in Article 3(2) and to the additional information for workers *sent to another Member State or a third country* in Article 6 shall be provided in the form of a document by the employer to the worker at the earliest opportunity and at the latest on the day it takes effect.
2. *The written document referred to in paragraph 1 shall not apply to changes that merely reflect a change in the laws, regulations and administrative or statutory provisions or collective agreements cited in the documents referred to in Article 4(1), and, where relevant, in Article 6.*

## Article 6

### *Additional information for workers [...] sent to another Member State or a third country*

1. Member States shall ensure that, where a worker is required to work in a Member State or third country other than the Member State in which he or she habitually works, the *employer shall provide the documents* referred to in Article 4(1) [...] before *the worker's* departure and *the documents* shall include at least the following additional information:
  - (a) the country or countries in which the work abroad is to be performed and its *anticipated* duration;
  - (b) the currency to be used for the payment of remuneration;
  - (c) where applicable, the benefits in cash or kind attendant on the work assignment(s) [...];
  - (d) *information as to whether repatriation is provided for, and if so, the conditions governing the worker's repatriation.*

2. Member States shall ensure that a posted *worker* covered by Directive 96/71/EC *shall in addition be notified of:*
  - (a) the remuneration to which the worker is entitled in accordance with the applicable law of the host Member State;
    - (aa) *where applicable, any allowances specific to posting and any arrangements for reimbursing expenditure on travel, board and lodging;*
  - (b) the link to the official national website(s) developed by the host Member State(s) pursuant to Article 5(2) of Directive 2014/67/EU *of the European Parliament and of the Council*<sup>14</sup>.
3. The information referred to in *paragraphs* 1(b) and 2(a) may, where appropriate, be given in the form of a reference to *specific provisions of* laws, regulations and administrative or statutory *acts* or collective agreements governing those particular points.
4. Unless Member States provide otherwise, paragraphs 1 and 2 shall not apply if the duration of each work period outside the Member State in which the worker habitually works is four consecutive weeks or less.

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<sup>14</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11).

## Chapter III

### Minimum requirements relating to working conditions

#### Article 7

##### *Maximum duration of any probationary period*

1. Member States shall ensure that, where an employment relationship is subject to a probationary period *as defined in national legislation and/or practice*, that period shall not exceed six months [...].

*In the case of fixed-term employment relationships, Member States shall ensure that the length of such a probationary period is proportionate to the expected duration of the contract and the nature of the work.*

*In the case of the renewal of a contract for the same function and tasks, the employment relationship shall not be subject to a new probationary period.*

2. Member States may, *on an exceptional basis*, provide for longer probationary periods in cases where this is justified by the nature of the employment or is in the interest of the worker. *In cases where the worker has been absent from work during the probationary period, Member States may provide that the probationary period can be extended correspondingly, in relation to the duration of the absence.*

#### Article 8

##### *Employment in parallel*

1. Member States shall ensure that an employer *is not to prohibit a worker* from taking up employment with other employers, outside the work schedule established with that employer, *or subject a worker to adverse treatment for doing so.*
2. *Member States* may [...] lay down conditions *for the use* of incompatibility [...] restrictions [...] by *employers, on the basis of objective* reasons, such as *health and safety*, the protection of business *confidentiality, the integrity of the public service* or the avoidance of conflicts of interests.

## Article 9

### Minimum predictability of work

1. Member States shall ensure that where a worker's work *pattern* is entirely or mostly *not predictable the worker shall not* be required to work by the employer [...] *unless both of the following conditions are fulfilled:*
  - (a) the work takes place within predetermined reference hours and reference days [...] *as referred to in* Article 3(2)(1)(ia), and
  - (b) the worker is informed by *his or her* employer of a work assignment *within* a reasonable period in advance *established* in accordance with *national law, collective agreements or practice as referred to in* Article 3(2)(1)(ii).
2. *Where one or both of the requirements laid down in paragraph 1 is not fulfilled, a worker shall have the right to refuse a work assignment without adverse consequences.*
3. *Where Member States allow an employer to cancel a work assignment without compensation, Member States shall take the measures necessary, in accordance with national law, collective agreements or practice, to ensure that the worker is entitled to compensation if the employer cancels after a specific reasonable deadline the work assignment previously agreed by the worker.*
4. *Member States may lay down modalities for the application of this Article, in accordance with national law, collective agreements and/or practice.*

## Article 9a

### Complementary measures for on-demand contracts

*Where Member States allow for the use of on-demand or similar employment contracts, they shall take one or more of the following measures to prevent abusive practices:*

- a) *Limitations to the use and duration of on-demand or similar contracts,*
- b) *A rebuttable presumption on the existence of an employment contract with a minimum amount of paid hours based on the average hours worked during a given period,*

c) *Other equivalent measures that ensure effective prevention of abusive practices.*

*Member States shall inform the Commission of such measures.*

#### *Article 10*

##### *Transition to another form of employment*

1. Member States shall ensure that ***a worker who has completed his or her probationary period, if any,*** with at least six months' *service* with the same employer may request a form of employment with more predictable and secure working conditions where available ***and receive a reasoned written reply. Member States may limit the frequency of requests triggering the obligation under this Article.***
2. ***Member States shall ensure that the*** employer ***provides the reasoned*** written reply within one month of the request. With respect to natural persons acting as employers and micro, small, or medium enterprises, Member States may provide for that deadline to be extended to no more than three months and allow for an oral reply to a subsequent similar request submitted by the same worker if the justification for the reply as regards the situation of the worker remains unchanged.

#### *Article 11*

##### *Mandatory training*

Member States shall ensure that where ***an employer is*** required by Union or national *law* or collective agreements to provide training to ***a worker*** to carry out the work for which ***he or she is*** employed, such training shall be provided cost-free to the worker, ***shall count as working time and, where possible, take place during working hours.***

## [Chapter IV: Collective agreements]

*[deleted/ chapter title only]*

*Article 12*

*Collective agreements*

Member States may allow social partners to *maintain, negotiate*, conclude *and enforce* collective agreements, in conformity with the national law or practice, which, while respecting the overall protection of workers, establish arrangements concerning the working conditions of workers which differ from those referred to in Articles 7 to 11.

## Chapter V

### Horizontal provisions

*Article 13*

**[deleted]**

*Article 14*

*Legal presumption and early settlement mechanism*

1. Member States shall ensure that, where a worker has not received in due time all or part of the documents referred to in Article 4(1) *or Article 5 at least* one of the following systems shall apply:
  - (a) the worker shall benefit from favourable presumptions defined by the Member State. [...] Employers shall have the possibility to rebut the presumptions; or
  - (b) the worker shall have the possibility to submit a complaint to a competent authority *or body and receive adequate redress* in a timely *and effective* manner. [...]
2. *Member States may provide that access to the systems referred to in paragraph 1 is subject to the notification of the employer and the failure of the employer to provide the missing information in a timely manner.*

*Article 15*  
*Right to redress*

Member States shall ensure that workers, including those whose employment relationship has ended, have access to effective and impartial dispute resolution and a right to redress [...] in case of infringements of their rights arising from this Directive.

*Article 16*  
*Protection against adverse treatment or consequences*

Member States shall introduce measures necessary to protect workers, including workers who are *workers'* representatives, from any adverse treatment by the employer or adverse consequences resulting from a complaint lodged with the employer or from any [...] proceedings initiated with the aim of enforcing compliance with the rights provided for in this Directive.

*Article 17*  
*Protection from dismissal and burden of proof*

1. Member States shall take the necessary measures to prohibit the dismissal or its equivalent and all preparations for dismissal of workers, on the grounds that they exercised the rights provided for in this Directive.
2. Workers who consider that they have been dismissed, or have been subject to measures with equivalent effect, on the grounds that they have exercised the rights provided for in this Directive may request the employer to provide duly substantiated grounds for the dismissal or its equivalent. The employer shall provide those grounds in writing.
3. Member States shall take the necessary measures to ensure that, when workers referred to in paragraph 2 establish, before a court or other competent authority *or body*, facts from which it may be presumed that there has been such dismissal or its equivalent, it shall be for the respondent to prove that the dismissal was based on grounds other than those referred to in paragraph 1.
4. Paragraph 3 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

5. Member States need not apply paragraph 3 to proceedings in which it is for the court or *other* competent *authority or* body to investigate the facts of the case.
6. Paragraph 3 shall not apply to criminal procedures, unless otherwise provided by the Member State.

*Article 18*

*Penalties*

Member States shall lay down the rules on penalties applicable to infringements of [...] national provisions adopted pursuant to this Directive or the relevant provisions already in force concerning the rights which are within the scope of this Directive. [...] Penalties shall be effective, proportionate and dissuasive. [...]

## **Chapter VI**

### **Final provisions**

*Article 19*

*Non-regression and more favourable provisions*

1. This Directive shall not constitute valid grounds for reducing the general level of protection already afforded to workers within Member States.
2. This Directive shall not affect Member States' prerogative to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to encourage or permit the application of collective agreements *which are* more favourable to workers.
3. This Directive is without prejudice to any other rights conferred on workers by other legal acts of the Union.

Article 20  
Implementation

1. Member States shall **take the necessary measures** necessary to comply with this Directive [by entry into force date + 3 years] [...]. **They shall immediately inform the Commission thereof.**
- 1a. **Member States shall, in accordance with their national law and practice, take adequate measures to ensure the effective involvement of the social partners and to promote and enhance social dialogue with a view to implementing the provisions of this Directive.**
2. When Member States adopt **the** measures **referred to in paragraph 1**, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
- 2a. **Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.**
- 2b. **Member States may entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so and provided that Member States take all necessary steps to ensure that they can at all times guarantee the results sought under this Directive.**

Article 21  
Transitional arrangements

The rights and obligations set out in this Directive shall apply to **all** employment relationships **by** [entry into force date + 3 years]. However, **an employer** shall provide or complement the documents referred to in Article 4(1), Article 5 and Article 6 only upon **the** request of a worker **already employed at that date**. The absence of such request shall not have the effect of excluding workers from the minimum rights established under **Articles 7 to 11**.

*Article 22*

*Review by the Commission*

By [entry into force date + 8 years], the Commission shall, ***after consulting*** the Member States and ***the*** social partners at Union level and taking into account the impact on ***micro***, small and medium-sized enterprises, review the application of this Directive ***and propose***, where appropriate, ***legislative*** amendments.

*Article 23*

*Repeal*

Directive 91/533/EEC shall be repealed with effect from [entry into force date + 3 years].

References to the repealed Directive shall be construed as references to this Directive.

*Article 24*

*Entry into force*

This Directive shall enter into force on the twentieth day following its publication in the Official Journal of the European Union.

*Article 25*

*Addresses*

This Directive is addressed to the Member States.

*Done at....*

*For the European Parliament*

*For the Council*

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