The Written Statement Directive

This briefing is one in a series of 'Implementation Appraisals' on the operation of existing EU legislation in practice. Each briefing focuses on a specific EU law, which is likely to be amended or reviewed, as envisaged in the European Commission's annual work programme. Implementation appraisals aim at providing a succinct overview of publicly available material on the implementation, application and effectiveness of an EU law to date – drawing on input from EU institutions and external organisations. They are provided to assist parliamentary committees in their consideration of the new proposals, once tabled.

1. Background

The 1989 Community Charter of the Fundamental Social Rights of Workers establishes several major principles of European labour law. One of its provisions, point 9, requires that the conditions of employment are included in laws, a collective agreement or a contract of employment, according to arrangements applying in each country. With regard to this provision and after receiving the Parliament’s opinion, in 1991 the Council adopted Directive 91/533/EC on an employer’s obligation to inform employees about the conditions applicable to the contract or employment relationship (the Written Statement Directive).2

Since 1991, when the directive was adopted, new forms of employment have appeared or developed. These include telework, employee-sharing, job-sharing, zero-hours contracts, casual work, interim management, ICT-based mobile work, crowd employment or various collaborative models of employment.3 These new forms of employment have been identified in various Member States4 and they often present a challenge for employees' right to be informed in accordance with the provisions of the directive. The 2017

---

1 According to the Liste des points prévus à l’ordre du jour des prochaines réunions de la Commission (SEC(2017) 108 final) this proposal should be submitted by the European Commission on 26 April 2017.
2 See, the original proposal for the directive.
3 Regarding the definitions of these forms of employment, see Eurofound, New forms of employment (2015).
4 ibid., pp. 8–9.
Commission work programme connects the REFIT revision of the Written Statement Directive with an intention of the European Commission to establish the European Pillar of Social Rights.5

Table: Overview of the main characteristics of the new forms of employment

<table>
<thead>
<tr>
<th>New form of employment</th>
<th>Characteristics of employers and employees</th>
<th>Contract type</th>
<th>Main job or income source</th>
</tr>
</thead>
</table>
| Employee-sharing       | – Mainly sectors with seasonal fluctuations (such as tourism and agriculture) and manufacturing  
– Largely private-sector SMEs  
– Workers with low-level or general skills, and specialists | Standard employment contract between employer and worker; civil law contract | Yes |
| Job-sharing            | – More common in the public sector  
– Both low-skilled and high-skilled jobs  
– Younger and older workers, re-entrants to the labour market, women | Specific employment contract or standard employment contract | yes |
| Interim management     | – More common in private sector traditional industries  
– Highly-skilled and experienced experts (mainly with management competences)  
– Middle-aged and older workers | Standard employment contract | Yes |
| Casual work            | – Mainly sectors with seasonal fluctuations (such as agriculture and tourism) or with variable demand (care work); low-paying industries  
– Low-skilled workers, women, younger workers | Standard employment contract | Yes, but in combination with other jobs |
| ICT-based mobile work  | – More common in private sector services (notably IT and creative industries) and international businesses  
– Young workers, high-skilled specialists, knowledge workers, management, men | Standard employment contract | Yes |
| Voucher-based work     | – Mainly household services and agriculture  
– Well-educated, wealthier, older employers  
– Women, low-skilled workers | Voucher | Probably additional family income |
| Portfolio work         | – Mainly sectors with seasonal fluctuations (such as agriculture and tourism)  
– Highly skilled and experienced experts | Civil law contract | Yes |
| Crowd employment       | – IT and web-related sectors, creative industries  
– SMEs and large companies lacking internal capacities, NGOs  
– Highly skilled, young workers | Civil law contract | Usually additional income |
| Collaborative employment | – Highly skilled, older workers in umbrella organisations  
– Highly skilled, young workers in the creative industries in co-working  
– Construction and manufacturing for cooperatives | n.a. | Yes |

Source: New forms of employment, Eurofund, 2015, table 16, p. 137.

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

The directive has two main aims: (1) to provide employees with improved protection against possible infringements of their rights; and (2) to create greater transparency on the labour market.6 Generally, the directive applies to all paid employees with a work contract or an employment relationship defined or governed by the law of the Member States.7 According to the directive, employers are obliged to notify their employees of the essential aspects of the contract or employment relationship. According to Article 2 (2), Directive 91/553, these essential aspects must include:

5 With regard to the European Pillar of Social Rights see, for example, Milotay N., European Pillar of Social Rights for a more social Europe, EPRS, European Parliament, September 2016 or Milotay N., European Pillar of Social Rights, EPRS, European Parliament, January 2017.

6 See preamble to the directive.

7 Some short-term employment relationships can be excluded from the directive, especially those with a total duration not exceeding one month and/or with a working week not exceeding eight hours (Article 1(2)(a), Directive 91/533). In some cases, a non-application of this provision can be justified by objective considerations (Article 1(2)(b), Directive 91/553).
(a) the identities of the parties;
(b) the place of work;
(c) the nature or category of work;
(d) the date of commencement of the contract;
(e) the duration of the temporary contract;
(f) the amount of paid leave;
(g) the length of the periods of notice;
(h) the initial basic amount and the frequency of remuneration;
(i) the length of a normal working day; and
(j) the existence of collective agreements governing the conditions of work.

Employers are obliged to provide this information not later than two months after the commencement of employment. Furthermore, the information must be provided in the form of a written contract and/or a letter of engagement, or in another document featuring the important information (Article 3, Directive 91/533). Expatriate employees should be provided with additional information, such as the duration of the employment abroad or the currency of remuneration (Article 4). The written document provided to the employee can only be changed in writing and not later than one month after the date of entry into effect of the change in question (Article 5). The directive does not affect Member States' laws that apply or introduce conditions which are more favourable to employees. Furthermore, the directive requires that Member States introduce into their national legal systems measures that are necessary to enable employees to defend their rights regarding the failure of an employer to comply with his or her obligations under the directive (Article 8). In this context, Member States can introduce a mandatory prior notification to the employer, before the employee takes the case to court.

2. EU-level reports, evaluations and studies

2.1 European Commission implementation reports


This report describes the transposition of the directive by the EU-15. It looks at the Member States' legislative instruments and quality of implementation of the directive, and finds some minor inconsistencies in this regard. In several cases, it finds that the Member States' laws provide employees with more extensive protection than provided for by the directive. Although the report does not make a general conclusion about the quality of implementation, it is reasonable to assume that apart from minor inconsistencies, the general implementation of the directive by the EU–15 has been sufficient.


This report analyses the implementation of the directive in the 10 Member States that joined the EU on 1 March 2004. It notes that several of them already had in place rules that covered the requirements of the directive to a certain extent. The report finds that the directive has been implemented incorrectly in a number of cases. As in the case of the previous report, it does not make a general conclusion about the quality of implementation.

---

8 The report has been published on the European Commission website; it is not available on EUR-Lex.
9 For example, Belgium, France and Austria have not implemented Article 2 of the directive properly. Some minor problems have also been found with regard to the implementation of other provisions.
10 For example, the way Austria has implemented Article 3 is more favourable than the text of the directive or than the way Luxembourg has implemented Article 5.
11 The report was outsourced by the European Commission and carried out by Labour Asociados Consultores.
12 Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia and Slovakia.
13 Such cases include, for example, Slovakia and the Czech Republic regarding Article 2, and Lithuania and Latvia with regard to Article 4.
Implementation report for Bulgaria (2009) and Implementation report for Romania (2009)

These two reports analyse the implementation of the directive in Bulgaria and Romania, which acceded to the EU on 1 January 2007. Similar to the abovementioned synthesis report, these reports analyse the legal and practical transposition of the directive to the Bulgarian and Romanian legal systems. The reports note that both countries have transposed the directive's obligations into their labour codes. In both cases, except for some minor issues, the reports conclude that overall, the directive and its provisions have been implemented correctly, or assess the transposition as sufficient.


The roadmap explains that the evaluation will assess the coherence of the directive with other policies and pieces of European legislation, namely: Directive 96/71/EC on posting of workers, Directive 2003/88 on working time, the EU Charter of Fundamental Rights and the Community Charter of the Fundamental Social Rights of Workers. The evaluation of the directive should mainly concentrate on:

- incorrect or incomplete transposition of the directive,
- infringement of the directive's principles,
- assessment of enforcement rights and sanctions and their imposition,
- margin of discretion of Member States,
- awareness of the rules, and so forth.

It should assess the extent to which the two (abovementioned) objectives of the directive 'correspond with the needs of the stakeholders in the EU economy.'

REFIT study to support evaluation of the Written Statement Directive (91/533/EC) – final report (March 2016)

The report notes that the employers' obligation serves two main objectives: (1) to enhance protection of employees; and (2) to increase transparency on the labour market. The study covers the EU-28 plus Norway, Liechtenstein and Iceland. With regard to compliance with the directive, the study reveals several gaps or instances of incorrect transposition of the directive in nine Member States. These gaps are with regard to essential elements of the information, expatriate workers and notification of changes. It also reveals various differences in the implementation of the directive among the Member States, including different requirements for timelines for providing information or differences in the use of the derogations allowed by the directive. The study notes that with regard to its two above mentioned objectives, the directive is still relevant, yet it has only partially been effective in achieving them. With regard to strengthening the rights of employees, the study points, for instance, to uncertainty regarding the definition of the term 'employee' and to insufficient enforcement of the rules. With regard to the transparency of the labour market, it deems the two-month period to inform the employee as long. While the study identifies clear benefits for employees, it also enumerates several issues – in particular atypical

---

14 These reports were outsourced by the European Commission and carried out by Milieu – Environmental Law & Policy. Only executive summaries of the reports are publicly available.
15 In the case of Romania, it was non-inclusion of one of the elements of a written information provided to expatriate employees, and incomplete transposition of the juridical protection of employees' rights. In the case of Bulgaria, it was incorrect transposition of the term 'place of work'.
16 Implementation report for Romania (executive summary), p. 4.
17 Implementation report for Bulgaria (executive summary), p. 3.
18 Evaluation and fitness check roadmap, p. 4.
19 ibid., p. 6.
20 ibid.
21 The REFIT study was outsourced by the European Commission and carried out by Ramboll Management Consulting between 2015 and 2016.
22 ibid., p. 23. These Member States were identified as Austria, Croatia, France, Latvia, Lithuania, Slovakia, Czech Republic, Italy and Malta.
23 ibid., p. 54
24 ibid., p. 62.
forms of employment and ineffective enforcement – that may hamper the directive's effectiveness.\textsuperscript{26} The study informs that most employers consider the costs they incur for meeting the obligation to provide information part of their normal business activities, and that some evidence shows that this burden has been disproportionately cumbersome for micro businesses. In this context, the study recommends simplification or cost reduction.\textsuperscript{27} It notes several discrepancies between the preamble and text of the directive that influence its internal coherence. With regard to the directive's external coherence, the study notes that despite its coherence with other EU legislative acts, some further alignment can take place regarding the general concept of 'employee'.\textsuperscript{28} The study claims that the directive's added value is in increasing certainty for both employees and employers, facilitating the mobility of workers and providing standardisation and predictability for businesses.\textsuperscript{29}

**European Commission staff working document: Regulatory Fitness and Performance Programme REFIT and the 10 Priorities of the Commission (October 2016)**

The staff working document\textsuperscript{30} confirms that the review of Directive 91/533/EC falls under Priority 5 of the 10 political priorities of the Juncker Commission for a deeper and fairer economic and monetary Union. According to the document, the review should improve 'the rules establishing employer’s obligations to inform employees of the conditions applicable to the contract or employment relationship'.\textsuperscript{31} The document also states that the Commission expects to have an evaluation of the directive by the end of 2016.\textsuperscript{32} The emerging findings of the evaluation exercise show that the written statement notification is not disproportionate to the benefits it brings.\textsuperscript{33} It estimates that the average one-off administrative cost per employee for all types of companies is €34.

**European Commission inception impact assessment: Revision of the Written Statement Directive (March 2017)**

This inception impact assessment\textsuperscript{34} identifies several problems that should be tackled by the revision of Directive 91/533/EC: (1) the directive does not cover all the workers in the EU, especially those employed in the new forms of employment; (2) the content of information provided to the employee should be improved; and (3) the enforcement of the directive should be improved as well. (4) The two-month deadline for notification of the employee should be shortened.\textsuperscript{35} Apart from that, the document assesses the main policy options and provides a preliminary assessment of the expected impacts.

### 3. European Parliament position / MEP questions

#### 3.1 Resolutions of the European Parliament

**European Parliament resolution of 25 October 2011 on promoting workers’ mobility within the EU**

With regard to providing information to workers, Parliament noted\textsuperscript{36} that informing workers about ‘the benefits, rights and obligations deriving from labour mobility should be further improved’ (point 64). In this context, it called on the Commission to coordinate its actions with national authorities to create links between the European job mobility portal, EURES, and the SOLVIT networks. Parliament also stressed that

\textsuperscript{26} ibid., pp. 81–82.

\textsuperscript{27} ibid., pp. 106–107.

\textsuperscript{28} ibid., pp. 108–120.

\textsuperscript{29} ibid., p. 125.

\textsuperscript{30} SWD(2016) 400 final.

\textsuperscript{31} ibid., p. 19.

\textsuperscript{32} As at the time this briefing was drafted, no such evaluation was publicly available.

\textsuperscript{33} SWD(2016) 400 final, p. 20.

\textsuperscript{34} The Better Regulation Guidelines (SWD (2015) 111 final) describe an ‘inception impact assessment’ as a roadmap for initiatives subject to an impact assessment. It provides a more detailed description of the problem, issues related to subsidiarity, the policy objectives and options, as well as the likely impacts of each option.


\textsuperscript{36} P7_TA(2011)0455.
high priority should be given to promoting active employment policies. Here Parliament urged to strengthen the implementation of Council Directive 91/533 on minimum information that employees should receive from their employers ‘regarding their employment relationship, including all relevant provisions concerning their employment situation in the host country’ (point 66). The Commission was also called upon to promote the involvement of the social partners so that ‘the practical implementation and strengthening of the rights of migrant workers’ can be ensured (point 67).

In its follow-up 17 to the resolution, the Commission claimed that EURES reform is under way. It also stated that, in cooperation with the Member States, it continued working on ‘the practical implementation of free movement rules on the rights of EU migrant workers within the existing statutory committees’. However, the Commission did not react to the need to improve the implementation of Directive 91/533/EC.

3.2 Written questions by MEPs

**Written question by Agnes Jongerius (S&D, the Netherlands), 19 November 2014**

The Member asked if the Commission was aware of the 2014 report by the Dutch Social and Economic Council on labour migration. Furthermore, she inquired if the Commission acknowledged the report’s criticism of the shortcomings of Directive 91/533/EC and Directive 96/71/EC on posting of workers. In this context, she asked whether the Commission intended to address these issues in the short or medium term.

**Answer given by Marianne Thyssen on behalf of the Commission, 21 January 2015**

The Commissioner informed that the Commission was aware of the abovementioned report. The answer provided by the Commission addressed the Member’s question in very general and vague terms and did not acknowledge any shortcomings of the mentioned directives. The Commissioner also noted that a targeted review of the Posting of Workers Directive was on the way. However, no additional information on the review of Directive 91/533/EC was provided.

**Written question by Therese Comodini Cachia (EPP, Malta), 30 September 2016**

The Member inquired whether the Commission intended to assess the impact of new forms of employment, such as zero-hour contracts, mini-jobs and online work, on the social welfare models and whether it planned any legislative action in this regard. The Member also inquired how the Commission intended to address the phenomenon of the new forms of employment.

**Answer given by Marianne Thyssen on behalf of the Commission, 16 January 2017**

The Commissioner informed that the development of a European Pillar of Social Rights intends to take into account ‘the changing realities in employment relationships’. She also informed that the 2017 Commission work programme had announced the Commission's intention to revise Directive 91/533/EC regarding these new forms of employment.

4. Court of Justice of the European Union

On several occasions, the Court of Justice of the European Union (the Court) has reacted to preliminary questions from national judiciaries and provided interpretation for several principles included in Directive 91/533/EC. In Joined Cases C-253/96 to C-258/96 Kampelmann, the Court ruled that the notification included in Article 2(1) of the directive enjoys the same presumption about its correctness as can be attached, in domestic law, to any similar document drawn up by the employer and communicated to the employee. The Court specified that even though the employer has to give the employee a brief specification or description of the work in the notification, a ‘mere designation of an activity cannot in

---

19 The Members also raised the issue of new forms of employment in various other questions E-007361-16, E-013653-15, E-010916-15, E-013423-15 and E-010251-15.
20 Joined Cases C-253/96 to C-258/96 Kampelmann, paragraph 35.
every case amount to even a brief specification or description of the work done by an employee'. In Case C-350/99 Lange, the Court ruled that 'the employer is obliged to notify the employee of any term having the nature of an essential element of the contract or employment relationship and requiring the employee to work overtime whenever requested to do so by his employer'.

5. European Economic and Social Committee

In its 2016 exploratory opinion, The changing nature of employment relationships and its impact on maintaining a living wage and the impact of technological developments on the social security system and labour law, the European Economic and Social Committee (EESC) expressed its hopes that the review of the Written Statement Directive and its potential amendments would react to the phenomenon of new forms of employment relationships and work, whilst taking into account the needs of SMEs. The EESC also recommended to extend the scope of the directive to cover all 'workers'. Furthermore, it proposed for written statements to be provided from day one of the employment and for there to be a minimum number of hours included in zero-hours contracts (point 1.8). In general, the EESC pointed to the rapid development in the nature of work and employment relations. In its 2016 opinion on launching a consultation on a European Pillar of Social Rights, the EESC pointed to the rapid development of new forms of work and to the fact that 'contractual arrangements cannot keep pace' with this development. In this context, the EESC called for 'an investigation into the contractual status of crowd workers and other new forms of work and employment relationships' (point 3.15). The EESC also noted that different forms of work require 'a suitable employment protection legislation environment' (point 3.5.).

6. European Commission public consultation

Between January 2016 and April 2016, the European Commission carried out a public consultation on the Written Statement Directive. At the time when the present briefing was being drafted, no summary report of this public consultation was publicly available.

7. Citizens' petitions

Several petitions have been submitted to the European Parliament dealing with the right of employees to receive a written statement from the employer. This is the case of petition 0020/2016, for example, where a citizen petitioned Parliament on employers' misuse of part-time contracts to avoid complaints about working conditions. Petitions 2016/2014, 0118/2014, 0111/2014 and 0453/2013 were filed with regard to the alleged infringement of the Written Statement Directive by the French government.

8. Stakeholders' comments

In its 2016 position on the 'European Pillar of Social Rights – working for a better deal for all workers', the European Confederation of Trade Unions (ETUC) noted the need for a legal proposal that would place limits on the practices that create insecurity at the workplace; such limits would include, among other things, prohibiting zero-hour contracts, if-and-when contracts and on-call arrangements. ETUC also required that proactive protection of workers, such as adequate notice of working arrangements, should be provided. The 2016 position paper of the European Association of Craft, Small and Medium-sized Enterprises (UEAPME) commented on the 20 principles of the European Pillar of Social Rights as outlined by the Commission. With regard to conditions of employment (principle 7a), UEAPME noted that informing employees in writing

---

41 ibid., paragraph 44.
42 Case C-350/99 Lange, paragraph 25.
43 A zero-hour contract (‘on-call’ contract) is a permanent contract with no guaranteed work, that is, the employer is not obliged to provide any minimum working hours.
44 ETUC, position paper, p. 6.
about the conditions of employment prior to the commencement of employment is inadequate and too burdensome. It recommends that employers should have to provide this information 'only at the beginning of the employment relationship'. The representative of national business federations, BUSSINESEUROPE, noted in its 2016 position paper on the European Pillar of Social Rights that the EU social acquis is well developed and the focus should now be on proper implementation and enforcement of existing legislation and on cutting unnecessary burdens. Similarly, in its 2016 opinion on the European Pillar of Social Rights, the European Centre of Employers and Enterprises providing Public Services, CEEP, underlined the need to ensure that the existing EU social legislation, including Directive 91/533, is fit for purpose, before producing new pieces of law. CEEP also called for monitoring the impact of digitalisation on jobs and working conditions, especially with regard to the development of new forms of employment.

9. Conclusions

The Written Statement Directive obliges employers to provide employees with a written statement on the essential aspects of the work contract or employment relationship. Despite the fact that the directive was transposed into the legal systems of all Member States, the reports show several cases of its incorrect or inadequate implementation. Furthermore, new forms of employment have emerged since the directive's adoption in 1991, which it does not cover. Court of Justice jurisprudence clarifying several of the directive's provisions has to be taken into account as well.

The European Parliament has called on the European Commission to update the Written Statement Directive so that it would react to these challenges. Similarly, the EESC has recommended that the existing legislation be updated. Furthermore, the representatives of various stakeholder groups have voiced requests to update this piece of EU legislation. Last, but not least, the European Commission itself has expressed the willingness to revise the Written Statement Directive as part of the REFIT exercise. It is expected that the Commission will submit this proposal on 26 April 2017.

10. Other sources of reference


To contact the Policy Cycle Unit, please e-mail: EPRS-PolicyCycle@ep.europa.eu

The opinions expressed in this document are the sole responsibility of the author(s) and do not represent an official position of the European Parliament. Reproduction and translation of this document for non-commercial purposes are authorised, provided the source is acknowledged and the publisher is given prior notice and sent a copy.


45 UEAPME, position paper, p. 10.