

The scope of EU labour law

Who is (not) covered
by key directives?



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Abstract

This in-depth analysis examines the current EU labour law instruments for workers' protection and highlights existing gaps in coverage which may require further action. It analyses a selection of directives in order to determine how non-standard workers are often excluded from their scope of application, and the extent to which newer instruments account for a broader variety of employment relationships.

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LIST OF ABBREVIATIONS

CEEP	European Centre of Enterprises with Public Participation
CJEU	Court of Justice of the European Union
EC	European Commission
ECJ	European Court of Justice
EPRS	European Parliamentary Research Service
ETUC	European Trade Union Confederation
EU	European Union
TFEU	Treaty on the Functioning of the European Union
TPWC	Transparent and Predictable Working Conditions
UNICE	Union of Industrial and Employers' Confederations of Europe
WLB	Work-Life Balance

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EXECUTIVE SUMMARY

Background

EU labour law directives have been adopted over a long period of time (1997-2019), meaning that some of them were adopted under the previous Treaties, while the most recent ones have the **Treaty of Lisbon** as their legal basis. Most of the directives adopted between 1997 and 2008 respond to the flexibilisation of labour markets and are targeted at establishing minimum standards for **equal treatment** of workers on different types of contracts (part-time, fixed-term, temporary contracts). Other directives, including the most recent ones, focus on setting minimum standards for working conditions for all workers based on an agreed definition of worker (Working Time Directive, Transparent and Predictable Working Conditions Directive, Work-Life Balance Directive).

The role of the European Parliament in the adoption of labour law directives has gradually increased under successive treaties. The **Treaty of Amsterdam**, which entered into force in 1999, increased the role of the European Parliament in terms of co-legislating with the Council including on employment policy. Under the Treaty of Lisbon (in force since 2009), the role of the European Parliament was further recognised as a full **co-legislator** in the **ordinary legislative procedure**.

Aims

- Analysing the scope of selected EU directives, to explore in detail who is covered and who is exempted from their scope of application.
- Identifying gaps, similarities and differences across directives as a basis for further action.

Key Findings

Standard employment relationships are on the decline as the world of work is being transformed. This raises questions about the protection of workers on non-standard or precarious contracts who do not meet the criteria of a standard employment relationship. The current EU labour law instruments do not adequately address this situation.

Most of the labour law directives give discretion to the Member States to define notions of worker, employment agreement or employment relationship in accordance with their national law and practice. This begs the question of whether the notion of worker should be defined at the EU level.

The newest EU labour law instruments (the Directive on Transparent and Predictable Working Conditions and the Work-Life Balance Directive) acknowledge the need for better protection of workers in new and non-standard forms of employment and thus have a broad personal scope of application.

1. OVERVIEW OF EU LABOUR LAW KEY DIRECTIVES

KEY FINDINGS

In the absence of a definition of a 'worker', most EU labour directives are inconsistent across Member States. This leads to the exclusion of a growing number of workers from older directives, who apply solely to standard employment relationships.

Two Directives from 2019 attempt to include a wider range of 'workers', notably the most vulnerable, but these texts still contain significant limitations. Notably, they do not account for casual work.

Most EU labour legislation takes the form of **directives** that set minimum levels of protection for workers, leaving Member States some discretion in transposing them in national legal orders. Furthermore, as EU law **lacks a uniform, single concept or a definition of a 'worker'**, the Member States define this concept in accordance with national labour law. Consequently, there may be a lack of consistency because the notions of 'employee', 'employment relationship' and 'employment contract' may differ. It may also cause the exclusion from coverage of certain workers, such as the **'bogus self-employed'** (someone who is self-employed but fulfils the conditions characteristic of an employment relationship). As non-standard forms of employment are on the increase in the EU, the existence of this gap attracts significant attention in the academic literature¹ which points to the need to define an autonomous concept of 'worker' in EU labour law. However, opinions are divided². On the one hand, the introduction of this concept means that EU law will be applied in a uniform and consistent manner. On the other hand, the employers' side is opposed to introducing such a concept due to the possible legal uncertainty it may cause. Also, questions arise as to what kind of definition could provide sufficiently wide protection for all categories that need it.

The Court of Justice of the European Union plays a significant role because it provides the interpretation of all EU legislation, including the interpretation of a concept of 'worker'. The CJEU, in its case law, has established criteria for determining **the status of a worker** (mainly in the context of internal market law and freedom of movement) and stated that 'the essential feature of that relationship is that, for a certain period of time, a person performs services for and under the direction of another person in return for which remuneration is received.' Additionally, the concept must be defined in accordance with objective criteria (Lawrie-Blum formula³).

The 'older' instruments (directives on part-time, fixed-term and temporary agency work) target a particular type of employment by ensuring the application of the principles of **non-discrimination** and equal treatment between workers. These directives refer to the Member States' definitions of worker (covering those 'who have an employment contract or employment relationship as defined by **the law, collective agreement or practice in force in each Member State**').

In contrast, the two newest directives from 2019, the Transparent and Predictable Working Conditions (TPWC) and Work Life Balance (WLB) Directives offer a broad personal scope and apply to all workers 'who have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State, taking into account the case-law of the Court of Justice'.

¹ Hendrickx, F. (2019), [Regulating working conditions through EU directives – EU employment law outlook and challenges](#), IPOL.

² Risak, M. and Dullinger, T. (2018), [The concept of 'worker' in EU law: Status quo and potential for change](#), ETUI.

³ Lawrie-blum v land baden-württemberg, judgment of the court, 3 july 1986, [Deborah Lawrie-Blum v Land Baden-Württemberg](#).

Summary table of EU labour law directives

Directive	Personal scope	(Possible) exemptions
Part-Time Work Directive ⁴ (1997)	Part-time workers as defined in law, collective agreements or practice of Member States	Part-time workers who work on a casual basis
Fixed-Term Work Directive ⁵ (1999)	Fixed-term workers as defined in law, collective agreements or practice of Member States	Initial vocational training relationships and apprenticeship schemes, public or publicly supported training, integration and vocational retraining
Working Time Directive ⁶ (2003)	All workers, private and public sectors of activity	Seafarers, mobile workers, workers on board a seagoing fishing vessel. Derogations possible (opt outs) for certain sector or by collective agreement
Temporary Agency Workers Directive ⁷ (2008)	Workers with a contract of employment or employment relationship with a temporary-work agency	Specific public or publicly supported vocational training, integration or retraining programme
Transparent and Predictable Working Conditions Directive ⁸ (2019)	Every worker in the Union with an employment contract or employment relationship - direct reference to European Court of Justice (ECJ) case law	Workers who work less than an average of three hours per week, certain groups of public sector workers, household workers, and seafarers or sea fishermen
Work-Life Balance Directive ⁹ (2019)	Every worker in the Union with an employment contract or employment relationship - direct reference to ECJ case law	---

Source: Authors' own elaboration.

⁴ [Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC - Annex: Framework agreement on part-time work.](#)

⁵ [Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.](#)

⁶ [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.](#)

⁷ [Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.](#)

⁸ [Directive \(EU\) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.](#)

⁹ [Directive \(EU\) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.](#)

In its initial proposal for the TPWC Directive, the Commission included the CJEU definition of worker, but this definition was not included in the final text of the directive. However, both directives aim to cover a wide range of workers, including those who are most vulnerable. Recital 8 of the TPWC Directive indicates that 'domestic workers, on-demand workers, intermittent workers, voucher based-workers, platform workers, trainees and apprentices could fall within the scope of this Directive' provided that they fulfil the criteria for determining the status of a worker established by the CJEU. Additionally, the recital provides that, 'genuinely self-employed persons should not fall within the scope of this Directive since they do not fulfil those criteria (...)' but that **bogus self-employed** should' and that 'the determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of the work and not by the parties' description of the relationship'. The clear reference to the CJEU's case law suggests¹⁰ that the personal scope of the instruments can be interpreted broadly. It means also that both instruments can cover more workers than those included by labour law of the Member States.

Moreover, the analysis of these instruments reveals a number of problematic issues. First of all, casual workers are excluded from the application of the Part-time Work Directive. This directive does not, however, provide a clear definition of casual work. The increasing amount of casual working arrangements in EU countries seems¹¹ to call into question this exclusion. Secondly, as indicated¹² in the literature, there is a need to revise the Working Time Directive due to several issues: generous opt outs, lack of provisions indicating its application per contract or per worker and lack of agreement on on-call duty. The revision of this instrument may also become more urgent as a result of the increase in teleworking caused by Covid-19.

¹⁰ Chierigato E. (2019) A Work–Life Balance for All? Assessing the Inclusiveness of EU Directive 2019/1158.

¹¹ De Stefano V. (2016), Casual Work beyond Casual Work in the EU: The Underground Casualisation of the European Workforce – And What to Do about it.

¹² Nowak T. (2018), The turbulent life of the Working Time Directive.

2. DIRECTIVES ON WORKING CONDITIONS AND ON WORKING TIME

KEY FINDINGS

The directives on transparent and predictable working conditions and on working time originally date from the beginning of the 1990s, but have been revised in 2019, in the light of recent changes regarding employment relationships.

Yet, some potential exemptions remain, and the two directives do not provide a specific definition of the notion of 'worker'.

2.1. The Directive on Transparent and Predictable Working Conditions

2.1.1. General information

Directive 2019/1152¹³ of the European Parliament and of the Council of 20 June 2019 on **Transparent and Predictable Working Conditions** lays down **minimum standards and rights for workers** in order to increase **predictability and transparency** in employment. The directive revises the previous 'Written Statement Directive'¹⁴ and aims to remedy its weaknesses in terms of personal and material scope¹⁵. The previous directive permitted the exemption of certain categories of workers (for example casual workers). It gave also Member States the option of defining to whom the directive was applicable (i.e. 'a paid employee'). Consequently, the Commission proposed¹⁶ a new directive in 2017 because it observed that recent trends in the world of work had caused more 'instability and lack of predictability in some working relationships'. The new directive refers in its recitals to principles of the **European Pillar of Social Rights**¹⁷: all workers have the right to **fair and equal treatment** regarding working conditions, access to social protection and training (Principle 5); workers have the right to be informed in writing about their **rights and obligations** at the very start of their employment and to **information and protection in case of dismissal** (Principle 7). Thus, the new directive offers minimum universal protection for **all workers** in the EU, 'including those in short-term and casual employment relationships'. It also enshrines some basic rights such as the right to a reasonable probationary period. Member States must transpose the new directive by 2022. The **legal basis** for the directive is Article 153(2) TFEU and point (b) of Article 153(1) TFEU.

2.1.2. Main content of the directive

The directive establishes the following rights and standards for workers:

- **Essential information** on the employment relationship (set by the directive) to be provided by the employer in writing or in another form accessible to the worker within the defined period and in case of modification of the employment relationship (Article 3, 4, 6 and 7);
- **A limited probationary period** and a right not to be subjected to a new probationary period in case of the renewal of a contract for the same function and tasks (Article 8);

¹³ [Directive \(EU\) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.](#)

¹⁴ [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.](#)

¹⁵ European Commission (2017), [REFIT Evaluation of the 'Written Statement Directive' \(Directive 91/533/EEC\).](#)

¹⁶ European Commission (2017), [Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union.](#)

¹⁷ European Commission (2017), [European Pillar of Social Rights.](#)

- An employer **shall not prohibit** a worker from taking up employment with other employers. Member States may allow use of limited incompatibility restrictions by employers (Article 9);
- A right to be properly informed by an employer of a work assignment within a reasonable notice period when the work pattern is entirely or mostly unpredictable (**minimum predictability of work**). A right to refuse work without adverse consequences if that condition is not met (Article 10);
- Measures to **prevent abusive practices** of on-demand contracts such as limitations to their use and duration. The directive provides for a **rebuttable presumption** (existence of an employment contract) based on the average hours worked (Article 11);
- **A right to request employment with more predictable and secure working conditions** (Article 12);
- A right to receive **training** to carry out the work **free of cost** (Article 13); and
- A right to access effective and impartial **dispute resolution** and a right to **redress** (Article 16).

Box 1: Directive 2019/1152 personal scope exemptions

The new directive broadens the personal scope of the Written Statement Directive, which provided the possibility to exclude from its application workers in atypical contracts, sometimes precarious employment (such as domestic workers, marginal part-time workers or workers on very short contracts).

Member States may exclude from the application of the directive or certain provisions of it (Article 1):

- Workers whose set and actual working time is **equal to or less than an average of three hours per week**;
- **Certain groups of workers**, such as civil servants, the armed forces or judges;
- **Natural persons in households acting as employers where work is performed for those households**;
- Seafarers or **sea fishermen**.

Source: Monika Kiss, [Ensuring more transparent and predictable working conditions](#), EPRS, August 2019.

2.1.3. Scope of the directive

The directive applies 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' (Article 1). The scope is the same as in the **Work-Life Balance Directive**¹⁸. Member States are given a margin of discretion but, as mentioned above, the reference to CJEU case law indicates that the personal scope may have a broader interpretation.

- The current directive covers all workers who work more than **three hours per week** in a reference period of four consecutive weeks. The original Written Statement Directive permitted the exclusion from its application of a working week not exceeding 8 hours and/or not exceeding one month. In addition, the current directive provides that, 'where the working hours are not determined in advance', for instance for on-demand workers, the 'provisions of the Directive should apply to them regardless of the number of hours they actually work'.

¹⁸ [Directive \(EU\) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.](#)

2.1.4. Definitions

Article 2 of the directive contains some general definitions (such as 'work schedule' or 'work pattern'), but it does not include the **definition of a 'worker'**, despite the fact that the Commission's original proposal¹⁹ for the directive defined 'worker' based on CJEU case law.

2.2. The Working Time Directive

2.2.1. General information

Directive 2003/88/EC²⁰ of the European Parliament and of the Council of 4 November 2003 on **certain aspects of the organisation of working time** consolidates the original Working Time Directive 93/104/EC²¹ from 1993 (as amended in 2000 by the Excluded Sectors Directive 2000/34/EC²²) and acknowledges that all workers across the EU should be guaranteed proper periods of rest and appropriate breaks. The purpose of the directive is to set out '**minimum safety and health requirements** for the organisation of working time' (Article 1) given that 'specific working conditions may have detrimental effects on the safety and health of workers' recital 11). It sets a **maximum limit for weekly working hours** and limits the length of night work periods. Both the European Pillar of Social Rights²³ (Principle 10) and the **Charter** of Fundamental Rights of the European Union²⁴ (Charter) in Article 31, refer to workers' rights to working conditions that respect their health and safety at work. In addition, Article 31 of the Charter provides for a right to 'limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave'. The **legal basis** for the directive is Article 137(2) of the EC Treaty (current Article 153(2) TFEU).

In 2004, the Commission presented its proposal²⁵ to amend the current directive with the aim of introducing an absolute maximum limit of weekly working time of sixty-five hours, as well as a definition of 'on call time'. However, no consensus could be reached on the generous opt-out possibilities, the definition of on-call duty and whether the directive applies **per worker or per contract**. Consequently, each Member State can implement the directive freely as regards these aspects. This raises a debate²⁶ about a need to revise the current instrument to ensure its uniform application within the EU.

2.2.2. Main content of the directive

The directive requires that Member States:

- Ensure that every worker has a **minimum daily rest period** of 11 consecutive hours per 24-hour period (Article 3);
- Ensure that workers are entitled to a **rest break** if the working day is longer than 6 hours (Article 4);

¹⁹ European Commission (2017), [Proposal for a directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union](#).

²⁰ [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](#).

²¹ [Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time](#).

²² [Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 amending Council Directive 93/104/EC concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that Directive](#).

²³ European Commission (2017), [European Pillar of Social Rights](#).

²⁴ [Charter of Fundamental Rights of the European Union](#).

²⁵ European Commission (2003), [Amended proposal for a Directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time](#), European Commission.

²⁶ Nowak T. The turbulent life of the Working Time Directive. *Maastricht Journal of European and Comparative Law*. 2018;25(1):118-129. DOI:10.1177/1023263X18760547.

- Ensure that workers are entitled to a minimum **uninterrupted rest period** of 24 hours per each 7-day period, plus 11 hours daily rest (Article 5);
- Ensure **maximum weekly working time** does not exceed 48 hours, including overtime, for each seven-day period (Article 6);
- Ensure that workers are entitled to **paid annual leave of** at least four weeks per year. This minimum period cannot be replaced by an equivalent payment (Article 7);
- **Limit the length of night work** to an average of eight hours in any 24-hour period (or no more than eight hours in case of work with special hazards or which is physically or mentally demanding) (Article 8);
- Ensure free, regular **health assessments** for night workers, and right to be transferred to day work on health grounds (Article 9);
- Where there are risks to workers' safety or health linked to night-time working, Member States may set out guarantees for **night-time working** (Article 10); and oblige employers to **notify regular use** of night workers to the competent authorities (Article 11);
- Ensure **safety and health protection** for night workers and shift workers (Article 12); and
- Ensure that employers 'take account of the general principle of **adapting work to the worker**' to alleviate monotonous work (Article 13).

Box 2: Working Time Directive exemptions

Working Time Directive exemptions:

- The directive does not apply to **seafarers** (Article 1);
- Articles 3,4,5,8 do not apply to **mobile workers** (Article 20);
- Articles 3 to 6 and 8 do not apply to **workers on board a seagoing fishing vessel** (Article 21);
- Additionally, this directive does not apply 'where other instruments contain more specific requirements' relating to the organisation of working time for certain occupations or occupational activities' (Article 14). This is currently the case for young workers, civil aviation, road transport, cross-border railway and inland waterway.

Source: [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](#); Eurofound (2018), [Opting out of the European Working Time Directive](#).

Box 3: Working Time Directive

Derogations (opt outs):

- **Relating to categories of workers or sectors:** Member States may derogate from the provisions on minimum daily rest, breaks, minimum weekly rest period, maximum weekly working time, and the length of night work in respect of certain groups of workers, when work activities take place in certain places (such as the worker's residence) or in certain industries or sectors (such as research or tourism) (Article 17);
- **Derogations by collective agreements** from most of the provisions, apart from the provision on maximum weekly working time (Article 18);
- Member States may derogate from the provision on a **maximum weekly working time**, providing that they ensure that employers respect the general health and safety provisions (and it is based on an agreement between employer and the worker concerned) (Article 22).

Source: [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](#); Eurofound (2018), [Opting out of the European Working Time Directive](#).

2.2.3. Scope of the directive

The directive does not contain a specific indication on its personal scope. However, the Commission's interpretive communication²⁷ indicates that it applies thus to '**every worker**' and Article 1 of the directive indicates that it applies to both **private and public sectors**. The original Working Time Directive provided for exclusion of the following sectors: 'air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training'. Although the current directive does not automatically exclude those sectors from the scope of its application, it does allow opt-out possibilities that relate to various categories of workers and sectors.

2.2.4. Definitions

In Article 2, the directive provides various definitions connected to the organisation of work, including 'working time', 'rest period', 'night time', 'shift work', and 'adequate rest'. It also defines certain types of workers, including '**night worker**', '**shift worker**' and '**mobile worker**'.

²⁷ [Interpretative Communication on Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time](#).

3. DIRECTIVES ON ATYPICAL EMPLOYMENT

KEY FINDINGS

The three directives targeting workers employed on atypical contracts (part-time, fixed-term and temporary agency contracts) constitute another evolution of EU labour law.

These directives attempt to account for the specifics of these employment situations, to ensure equal treatment and protection against discrimination.

Yet, Member States remain able to exempt certain categories of workers from the agreements.

According to the European Commission's 2019 Annual Review of Employment and Social Developments in Europe²⁸, part-time work amounted to 19.2% of total employment in 2018 and about 5% of all workers are in involuntary part-time employment. Temporary contracts amounted to 12.1% of total employment in 2018, the majority of which are also involuntary. The three directives that came into being before the **Treaty of Lisbon** came into force in 2009, offer protection to workers employed on **atypical contracts**, namely **part-time, fixed-term and temporary agency contracts**, which have become a feature of a number of sectors and occupations. The directives recognise the need to approximate the living and working conditions of atypical workers with those of workers on open-ended contracts. Therefore, they aim to ensure **equal treatment** and **protection against discrimination**. The directives allow the Member States to define **employment agreement** or **employment relationship** in accordance with their national law and practice.

3.1. The Part-Time Work Directive

3.1.1. General information

Council Directive 97/81/EC²⁹ of 15 December 1997 implements the **Framework Agreement on part-time work** of 6 June 1997 concluded between the general cross-industry organisations: Union of Industrial and Employers' Confederations of Europe (UNICE), the European Centre of Enterprises with Public Participation (CEEP) and the European Trade Union Confederation (ETUC). The parties to the Framework Agreement recognised the need to facilitate access to part-time work for both men and women, enabling them to combine work and family life or further education. It lays down **general rules and minimum conditions**, contains provisions to **eliminate discrimination** against part-time workers, to improve the **quality of this work pattern** and to support the increase of **voluntary part-time work opportunities** (Clause 1). The directive is based on Article 139(2) EC Treaty (current 155(2) TFEU). The legal basis for the Framework Agreement is Article 4(2) of the Agreement on Social Policy annexed to the Protocol on Social Policy of the Treaty of Maastricht in 1992 which recognises a role for the social partners in the legislative process.

²⁸ European Commission (2019), [Employment and Social Developments in Europe Sustainable growth for all: choices for the future of Social Europe, European Commission](#).

²⁹ [Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC - Annex: Framework agreement on part-time work](#).

3.1.2. Main content of the directive

The directive establishes the following principles and obligations:

- As regards employment conditions, the treatment of part-time workers cannot be less favourable than comparable full-time workers solely because they work part time, unless the different treatment is objectively justified (principle of **non-discrimination**) (Clause 4.1);
- Member States may make access to particular conditions of employment subject to a period of service, time worked or earnings qualification, if objectively justified and after consultation of the social partners (Clause 4.4);
- an obligation to **identify and remove legal or administrative obstacles** limiting part-time work opportunities (Clause 5);
- refusal of a worker to be **transferred from full-time to part-time work** or vice-versa does not constitute a reason for termination of his or her employment (Clause 5.2);
- employers should consider **workers' requests to be transferred from full-time to part-time employment** (and vice-versa) or to increase working time (Clause 5.3 a,b);
- employers should **facilitate access to part-time work** in an organisation and provide appropriate information on both part-time and full-time work opportunities (Clause 5.3 c,d); and
- employers should facilitate opportunities for **vocational training** to facilitate 'career opportunities and occupational mobility' (Clause 5.3 d).

3.1.3. Scope of the directive

The personal scope of the directive is indicated in Clause 2, whereby the directive is applicable to:

- 'part-time workers who have an employment contract or employment relationship **as defined by the law, collective agreement or practice in force in each Member State**'.

Box 4: Part-Time Work Directive exemptions

Member States, after consultation with the social partners and/or the social partners, may **wholly or partly** exclude from the application of the Agreement (clause 2):

- part-time workers who work on a **casual basis**.

Source: [Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC](#) - Annex: Framework agreement on part-time work.

3.1.4. Definitions

The directive provides both definitions of '**part-time worker**' and '**comparable full-time worker**'. '**Part-time worker**' is defined as 'an employee whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of work of a comparable full-time worker'. The '**comparable full-time worker**' is defined as 'a full-time worker in the same establishment having the same type of employment contract or relationship, who is engaged in the same or a similar work/occupation, due regard being given to other considerations which may include seniority and qualification/skills'. The directive does not provide any definition of **casual work**.

3.2. The Fixed-Term Work Directive

3.2.1. General information

Council Directive 1999/70/EC³⁰ of 28 June 1999 implements the **Framework Agreement on fixed-term work** of 18 March 1999 concluded between general cross-industry organisations (Union of Industrial and Employers' Confederations of Europe (UNICE), the European Centre of Enterprises with Public Participation (CEEP) and the European Trade Union Confederation (ETUC). It lays down general provisions and minimum standards for fixed-term employment. It aims to increase the quality of **fixed-term work**, ensure **non-discrimination** and 'prevent abuse arising from the use of successive fixed-term employment contracts or relationships' (Clause 1). Another aim is to allow for '**flexible organisation of work**' in order to meet the demands of both employers and workers, and to achieve a 'balance between flexibility and security'. The **legal basis** for the Framework Agreement is Article 139(2) of the EC Treaty (current Article 155 TFEU).

3.2.2. Main content of the directive

The directive provides for the following principles, measures and obligations:

- fixed-term workers shall not be treated less favourably than comparable permanent workers solely because they are on a fixed-term contract, unless objectively justified (principle of **non-discrimination**) (Clause 4);
- measures **preventing abuse** stemming from the use of successive fixed-term employment contracts, such as objective justification for renewal of such contracts, maximum limits to duration of successive fix-term contracts, and the number of renewals (Clause 5);
- employers are obliged to provide fixed-term workers with **information on vacancies** available in their organisation (Clause 6);
- employers are obliged to **facilitate access to appropriate training** possibilities in order to enhance fixed-term workers' skills, career development and occupational mobility (Clause 6); and
- measures on **information and consultation** (Clause 7).

3.2.3. Scope of the directive

The directive applies to:

- fixed-term workers having an employment contract or employment relationship **as defined in law, collective agreements or practice of Member States** (Clause 2).

Box 5: Fixed-Term Work Directive exemptions

Member States, after consultation with the social partners and/or the social partners, may exclude from the application of the Agreement (clause 2):

- initial **vocational training** relationships and **apprenticeship** schemes; and
- employment contracts and relationships concluded within the framework of a specific **public or publicly-supported** training, integration and **vocational** retraining programme.

Source: [Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.](#)

3.2.4. Definitions

The directive defines a '**fixed-term worker**' as a person with an employment contract or employment relationship directly with an employer and where the end of this employment contract or employment relationship is set by objective provisions such as a specific **date**, finishing a defined **task**, or the incidence of a specific **event**. A '**comparable permanent worker**' is defined as a worker with an employment contract or relationship of indefinite duration, working in the same organisation and engaged in the same or similar work/occupation, with due regard to qualifications (Clause 3).

3.3. Temporary Agency Workers Directive

3.3.1. General information

Directive 2008/104/EC³¹ of the European Parliament and of the Council of 19 November 2008 on **temporary agency work** addresses the issue of disparities with regard to the use of temporary agency work, as well as differences in temporary agency workers' legal situation, status and working conditions across the EU. It recognises that temporary agency work is a means of meeting the demands of both undertakings and employees, allowing for greater flexibility in forms of working and better work-life balance. The **purpose** of the directive (Article 2) is to offer temporary workers the protection they need and improve the standard of temporary agency work by ensuring that the principle of **equal treatment** is applied and that temporary agencies are recognised as employers. It aims to implement Article 31 of **the Charter** which provides for the right of every worker to appropriate 'working conditions which respect his or her health, safety and dignity'. The **legal basis** for the directive is Article 137(2) of the EC Treaty (current Article 153 TFEU).

3.3.2. Main content of the directive

The directive sets out the following principles:

- employment conditions (defined in the directive) for temporary agency workers should be at least as those that would apply in case of direct recruitment of such workers by the user company to occupy the same position. The principle of **equal treatment** applies also to pregnant and nursing workers, to equal treatment for men and women, and to any action to combat discrimination on various grounds, such as sex, race or ethnic origin, religion, disabilities, age and sexual orientation (principle of **equal treatment**) (Article 5);
- temporary workers should be given **the same opportunities** as other workers in an organisation to find permanent employment and shall be informed accordingly about any permanent open vacancies (Article 6.1);
- a temporary agency worker is **not prohibited from concluding** an employment contract or employment relationship with the user undertaking after the temporary assignment ends (Article 6.2);
- temporary agency workers **cannot be charged any recruitment fees** by temporary work agencies (Article 6.3);
- temporary agency workers shall be granted access, under the same conditions, to **collective facilities** in the user company (such as the canteen or child-care facilities), also available to workers directly employed by that company, unless objectively justified (Article 6.4); and

³⁰ [Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.](#)

³¹ [Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.](#)

- Member States shall promote **dialogue** between social partners in order to increase training and childcare accessibility for temporary workers (Article 6.5).

3.3.3. Scope of the directive

The directive applies to (Article 1):

- 'workers with a contract of employment or employment relationship with a **temporary-work agency** who are assigned to **user undertakings** to work temporarily under their supervision and direction'; and
- both **public and private** organisations which are temporary-work agencies or user companies conducting economic activities, whether they operate for profit or not.

Box 6: Temporary Agency Workers Directive exemptions

Member States after the consultations with the social partners, may decide that the directive does not apply to (Article 1):

- employment contracts or relationships concluded under a **specific public or publicly supported vocational training, integration or retraining programme.**

Source: [Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.](#)

3.3.4. Definitions

The directive provides various definitions. A '**worker**' is defined as 'any person who, in the Member State concerned, is protected as a worker **under national employment law**'. Additionally, '**temporary agency worker**' is defined as 'a worker with a contract of employment or an employment relationship with a temporary-work agency with a view to being assigned to a user undertaking to work temporarily under its supervision and direction'. The directive contains other definitions, including those of '**user undertaking**' ('any natural or legal person for whom and under the supervision and direction of whom a temporary agency worker works temporarily'), '**assignment**', '**basic working and employment conditions**' ('working and employment conditions laid down by legislation, regulations, administrative provisions, collective agreements and/or other binding general provisions in force in the user undertaking relating to the duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays and pay').

4. THE WORK-LIFE BALANCE DIRECTIVE

KEY FINDINGS

The Directive on Work Life balance for Parents and Carers finally recognises the challenges associated with caring responsibilities for workers.

It applies to all workers, without any exemptions, and goes potentially further than Member State law.

4.1. The Directive on Work Life balance for Parents and Carers

4.1.1. General information

Directive 2019/1158³² of the European Parliament and the Council of 20 June 2019 on **Work-Life Balance for Parents and Carers** recognises that work-life balance continues to be a major challenge for many parents and workers with caring responsibilities. This instrument repealed the revised Parental Leave Directive³³. A previous Commission proposal, the Maternity Leave Directive³⁴, was withdrawn due to a lack of progress. In the proposal for the Work-Life Balance Directive³⁵ presented in 2017, the Commission explained its intention to address the issue of '**women's under-representation in employment**' and to provide for **paid paternity and parental leave** in order to allow more equal sharing of care responsibilities between men and women. The directive therefore aims to help meet the **Treaty objectives of equality between men and women** in employment, **equal treatment** in the workplace and to promote **quality employment**. The European Pillar of Social Rights in its Principles 2 and 9 refers to the principles of **gender equality** and **work-life balance**. Furthermore, the **Charter** of Fundamental Rights refers to the right to 'reconciliation of family and professional life' (Article 33). The **legal basis** for the directive is Article 153(2) TFEU, in conjunction with point (i) of Article 153(1) TFEU. Member States must transpose the directive into national law by 2022.

4.1.2. Main content of the directive

The directive contains following provisions:

- the right to **paternity leave** (irrespective of worker's marital or family status): fathers (or second parents) have the right to leave of 10 working days on the birth of a child (Article 4);
- the right to **parental leave** of four months for every worker (two months of which **cannot be transferred** between parents (Article 5));
- the right to **carers' leave** of five working days per year (Article 6);
- the right to **time off from work on grounds of force majeure** due to an urgent family situation (Article 7);

³² [Directive \(EU\) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.](#)

³³ [Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC.](#)

³⁴ European Commission (2015), [Delivering for parents: Commission withdraws stalled maternity leave proposal and paves the way for a fresh approach.](#)

³⁵ European Commission (2010), [Proposal for a directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.](#)

- **payment or allowance** for workers who exercise their right to leave (Article 8);
- the right to request **flexible working arrangements** in order to provide care (Article 9);
- **workers' employment rights**, such as the entitlement, at the end of the period of leave, to return to one's job or an equivalent position with no less favourable conditions (Article 10);
- an obligation on Member States to take the necessary measures to **prohibit discrimination** against workers who exercise their rights to leave and care (Article 11); and
- an obligation on Member States to take the necessary measures to **prohibit dismissal** of workers on the grounds of exercising their rights to leave (Article 12).

4.1.3. Scope of the directive

The directive applies to (Article 2): 'all workers, men and women, who have an employment contract or employment relationship as **defined by the law, collective agreements or practice in force in each Member State, taking into account the case-law of the Court of Justice**'.

The revised Parental Leave Directive³⁶ directly stated that part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency shall not be excluded (Clause 1). The new WLB Directive recognises the need to ensure that non-standard employees have access to parental rights. By making a reference to the case law of the CJEU, it indicates³⁷ that the personal scope of the new instrument may have broader interpretation and may apply to a wider group than those who are covered by Member State law.

Box 7: Work-Life Balance Directive exemptions

This directive does not provide for any exemptions, and therefore it applies to **all workers** with employment other employment relationships, including **part-time workers, fixed-term contract workers** or persons with a contract of employment or employment relationship with a **temporary agency**.

Source: [Directive \(EU\) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU](#).

4.1.4. Definitions

In its Article 3, the directive provides several definitions, including 'paternity leave', 'parental leave', 'carer's leave', 'carer', 'relative' and 'flexible working arrangements'. 'Carer', for instance, is defined as a 'worker providing personal care or support to a relative, or to a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason'. However, the initial Commission's proposal³⁸ required carer's leave to be remunerated, whereas the current directive does not.

³⁶ European Commission (2017), [European Pillar of Social Rights](#).

³⁷ Chierigato E. (2019), A Work–Life Balance for All? Assessing the Inclusiveness of EU Directive 2019/1158.

³⁸ [Directive \(EU\) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU](#).

REFERENCES

- Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>.
- Chierigato E., *A Work–Life Balance for All? Assessing the Inclusiveness of EU Directive 2019/1158*. International Journal of Comparative Labour Law and Industrial Relations. Published online 2020:59-80.
- 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), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31991L0533&from=EN>.
- Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time (OJ L 307, 13.12.1993), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31993L0104&from=EN>.
- Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC - Annex: Framework agreement on part-time work (OJ L 14, 20.1.1998), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997L0081&from=EN>.
- Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31999L0070&from=EN>.
- Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ L 68, 18.3.2010), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0018&from=EN>.
- De Stefano V., *Casual Work beyond Casual Work in the EU: The Underground Casualisation of the European Workforce – And What to Do about it*. European Labour Law Journal. 2016;7(3):421-441. DOI:10.1177/201395251600700307.
- Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L 186, 11.7.2019), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1152&from=EN>.
- Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.7.2019), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1158&from=EN>.
- Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 amending Council Directive 93/104/EC concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that Directive (OJ L 195, 1.8.2000), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0034&from=GA>.
- 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), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0088&from=EN>.

- 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), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0104&from=EN>.
- Eurofound (2015), *Opting out of the European Working Time Directive*, Publications Office of the European Union, Luxembourg.
- European Commission (2004), Amended proposal for a Directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time, available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0607:FIN:EN:PDF>.
- European Commission (2015), Delivering for parents: Commission withdraws stalled maternity leave proposal and paves the way for a fresh approach, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5287.
- European Commission (2017), European Pillar of Social Rights, available at: https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet_en.pdf.
- European Commission (2017), Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017PC0797&from=EN>.
- European Commission (2017), Proposal for a directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, European Commission, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017PC0253&from=EN>.
- European Commission (2017), REFIT Evaluation of the 'Written Statement Directive' (Directive 91/533/EEC), available at: <https://ec.europa.eu/social/main.jsp?catId=1313&langId=en&moreDocuments=yes>.
- European Commission (2019), Employment and Social Developments in Europe Sustainable growth for all: choices for the future of Social Europe, available at: <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8219>.
- Hendrickx, F., *Regulating working conditions through EU directives – EU employment law outlook and challenges*, Publication for the committee on Employment and Social Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2019, available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/638430/IPOL_BRI\(2019\)638430_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/638430/IPOL_BRI(2019)638430_EN.pdf).
- Interpretative Communication on Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time (OJ C 165, 24.5.2017), available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0524\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0524(01)&from=EN).
- Judgement of the Court of 3 July 1986. Deborah Lawrie-Blum v Land Baden-Württemberg, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61985CJ0066&from=EN>.

- Martin Risak and Thomas Dullinger, *The concept of 'worker' in EU law: Status quo and potential for change*, ETUI, 2018, available at: <https://www.etui.org/sites/default/files/18%20Concept%20of%20worker%20Risak%20Dullinger%20R140%20web%20version.pdf>.
- Kiss M., *Ensuring more transparent and predictable working conditions*, EPRS, august 2019.
- Nowak T., *The turbulent life of the Working Time Directive*. Maastricht Journal of European and Comparative Law. 2018;25(1):118-129. DOI, see: [10.1177/1023263X18760547](https://doi.org/10.1177/1023263X18760547).

This in-depth analysis examines the current EU labour law instruments for workers' protection and highlights existing gaps in coverage which may require further action. It analyses a selection of directives in order to determine how non-standard workers are often excluded from their scope of application, and the extent to which newer instruments account for a broader variety of employment relationships.

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