

# Ensuring more transparent and predictable working conditions

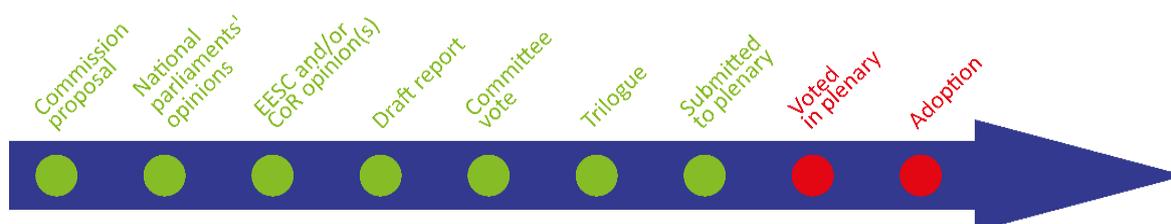
## OVERVIEW

An employer's obligation to inform their employees on the conditions applicable to their contracts is regulated by Directive 91/533/EEC. Major shifts in the labour market due to demographic trends and digitalisation, spawning a growing number of non-standard employment relationships, have made it necessary to revise the directive.

The European Commission has responded to the need for change with a proposal aimed at updating and extending the information on employment-related obligations and working conditions, and at creating new minimum standards for all employed workers, including those on atypical contracts. In the European Parliament, the Committee for Employment and Social Affairs (EMPL) has adopted a report focused on the scope of the directive, on employees' working hours and the conditions for making information available to them, and on employers' responsibilities.

The provisional agreement concluded in trilogue between European Parliament and the Council negotiators sets, among other things, new rules on the scope of the directive, the date of providing information, the length of probatory periods, and regulates working conditions in the case of variable working schedules. This agreement now needs to be approved by Parliament in plenary.

<b>Proposal for a directive of the European Parliament and the Council on transparent and predictable working conditions in the European Union</b>		
<i>Committee responsible:</i>	Employment and Social Affairs (EMPL)	COM(2017) 797 21.12.2017.
<i>Rapporteur:</i>	Enrique Calvet Chambon (ALDE, Spain)	2017/0355(COD)
<i>Shadow rapporteurs:</i>	Dennis Radtke (EPP, Germany) Javi López (S&D, Spain) Anthea McIntyre (ECR, United Kingdom) Paloma López Bermejo (GUE/NGL, Spain) Tamás Meszerics (Greens/EFA, Hungary) Laura Agea (EFDD, Italy) Joëlle Mélin (ENF, France)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	First-reading vote in plenary	



## Introduction

[Directive 91/533/EEC](#) (the Written Statement Directive) regulates the employers' obligation to inform their employees on the conditions applicable to their contracts or employment relationships. According to the Eurostat [EU labour force survey](#), in 2016 25 % of employment relationships were non-standard, due to the [significant changes](#) taking place in the labour market as a result of factors such as demography and digitalisation. In general, the labour market has become more flexible: there has been an increase in the number of part-time, temporary and on-demand contracts, and in the peer-to-peer exchanges known as the collaborative economy. However, this flexibility has rendered working relationships unstable and increasingly unpredictable. For instance, on-demand or intermittent work, exclusivity clauses and involuntary part-time or temporary work pose problems of predictability and stability. To address these problems, Member States have introduced new regulations and put in place collective agreements in certain enterprises. However, this has brought about much diversity and unfair competition among the Member States. In addition to these issues, a 2013 [evaluation](#) of the Written Statement Directive in the framework of the REFIT programme identified weaknesses in the personal and material scope of the directive; furthermore, the [public consultations](#) on the European Pillar of Social Rights identified gaps between the current EU social *acquis* and the situation on the labour market. A revision of the directive had become indispensable.

## Existing situation

Articles 153(1)(b) and (2)(b) of the Treaty on the Functioning of the European Union (TFEU) stipulates that directives are the legal instrument to be used for establishing minimum requirements concerning working conditions; these requirements would be gradually implemented by the Member States.

The Council of the EU adopted Directive 91/533/EEC on 14 October 1991, laying down the requirements that employers and employees need to observe. For instance, employers should provide their employees with information on: the place of work; the nature and category of work; the date of commencement of the contract or employment relationship and the expected duration thereof; the amount of paid leave; the length of the periods of notice to be observed by the employer and the employee, should the contract or employment relationship be terminated; the composite elements and frequency of payment of the salary; the length of the employee's normal working day or week; and collective agreements (where appropriate). The employee is to be informed on any change in the essential elements of their contract or employment relationship. The directive was designed with the aim of improving employee protection, avoiding uncertainty and insecurity about the terms of the employment relationship, and introducing greater transparency to the labour market. It furthermore sought to encourage substantial convergence of labour legislation in the Member States. Accordingly, it laid down minimum standards (without prejudice to national legislation) concerning the form of the contract or employment relationship. Member States were required to adopt the legislation necessary to comply with the directive no later than 30 June 1993. The directive was [transposed](#) in 24 Member States, with the exception of Ireland, Greece, Luxembourg and Malta.

Three [implementation reports](#) on the directive, published respectively in 1999, 2007 and 2009, only gave account of the transposition rules adopted by the Member States<sup>1</sup> and briefly commented on the completeness and adequacy of these rules. Therefore, they did not really assess the relevance, effectiveness, efficiency, coherence and EU added value of the directive.

## Parliament's starting position

In its [resolution](#) of 19 January 2017 on the European Pillar of Social Rights, the European Parliament called to extend the existing minimum employment standards to new kinds of employment

relationships. Furthermore, it called for improving the enforcement of EU law, increasing legal certainty across the single market, and preventing discrimination by complementing existing EU law to ensure a core set of enforceable rights for every worker, independently of the type of contract or employment relationship they have. The resolution also called for a framework directive on decent working conditions.

Parliament's [resolution](#) on working conditions and precarious employment of 4 July 2017 called on the Commission to revise the Written Statement Directive in order to take account of the new forms of employment.

## Preparation of the proposal

In the framework of the [REFIT programme](#), the Commission considered it necessary to carry out an [evaluation](#) of the legislation on employers' obligations with regard to providing information on employment relationships.

In its [roadmap](#) published in January 2016, the Commission stated its intention to thoroughly evaluate Directive 91/533/EEC, by assessing its compliance, relevance, effectiveness, efficiency, coherence and EU added value. The evaluation included an examination of amendments to the directive and other actions that proved to be necessary in order to achieve the objectives of the directive.

Between 26 January and 20 April 2016, the Commission carried out a [public consultation](#) on the Written Statement Directive in the framework of the REFIT programme.

On the Commission's proposal, an open public consultation on a European Pillar of Social Rights was held from March to December 2016. The [report](#) summarising its results revealed that there was a growing need to define and apply appropriate rights for workers in new and non-standard forms of employment relationships. Furthermore, it found that there was insufficient protection of the working conditions of a growing number of workers, one such example being that workers did not receive the written statement at all or it was provided too late and/or the information it contained was inadequate. The problem has negative impacts not only on workers, but also on companies. This was reconfirmed by the Commission's [REFIT evaluation of the directive](#) published on 26 April 2017.

In accordance with Article 154 TFEU, the Commission undertook a [two-phase consultation](#) with the social partners on a possible revision of the Written Statement Directive. The first phase of the consultation was launched on 26 April 2017, simultaneously with the European Pillar of Social Rights, and ended on 23 June 2017. The second phase, focusing on the modernisation of labour contract rules, started on 21 September 2017. It built upon the outcome of the discussions from the first phase and ended on 3 November 2017.

On 25 October 2017, the Commission presented its [work programme](#) entitled An agenda for more united, stronger and more democratic Europe. One of its planned initiatives was the revision of the Written Statement Directive. This initiative had a non-legislative nature and was rather focused on implementation and legal clarity.

In his 2017 [State of the Union](#) address, entitled Roadmap for a more united, stronger and more democratic Union (representing the draft Commission work programme up to the end of 2018), Commission President, Jean-Claude Juncker, mentioned among the 'Initiatives to be launched and/or completed by end 2018' the publication of a 'Proposal for a revision of the Written Statement Directive to improve the transparency and legal predictability of employment contracts and an initiative on access to social protection for atypical self-employed workers'.

Alongside its proposal of 21 December 2017, the Commission published an [impact assessment](#). This presents the operational objectives related to the specific objectives of the proposal. These operational objectives are as follows:

- **in relation to specific objective 1:** i) 'increase the number of workers receiving written information on working conditions'; ii) 'improve the quality of information on working conditions received in writing'; and iii) 'improve the timeliness of working conditions received in writing';
- **in relation to specific objective 2:** iv) 'increase the predictability of work schedules'; v) 'increase transitions from non-standard to standard employment'; vi) 'improve the match between willingness to work and the work available (decrease underemployment)'; vii) 'decrease abuse of probation periods'; and viii) 'facilitate take-up of mandatory training';
- **in relation to specific objective 3:** ix) 'facilitate identifying and resolving incompliance'; and x) 'increase incentives for compliance';
- **in relation to specific objective 4:** xi) 'company level simplification, increase coherence and facilitate creation of written statements'; xii) 'labour market simplification, increase the consistency of written statement requirements across the EU labour markets'; and xiii) 'facilitate workers' mobility'.

The impact assessment presented four policy options:

- **the baseline scenario**, according to which the existing directive continues to apply;
- **the 'Extended personal scope and strengthened requirements' option**, which comprises measures such as extending the scope of the written statement (to include remuneration, working time, social security, training entitlement, probationary period, written statement templates and additional information for posted workers), shortening the deadline (the written statement should be provided on the first day of the employment relationship at the latest) and improving enforcement (favourable legal presumptions for employees regarding their working conditions in case of unlawful absence of written statements, and an early settlement mechanism). Furthermore, the personal scope would be extended by removing the exemptions in the existing Written Statement Directive. However, Member States may exclude employment relationships of up to eight hours per month from the scope;
- **the 'Strengthened requirements and new minimum rights' option**, which would not change the personal scope as determined by the existing directive. This option contains REFIT measures and proposes new rights. For instance, employers should notify workers of the periods of hours and days within which they may be requested to work, and inform workers of a work assignment within a reasonable advance period. The maximum length of probation would be six months. The package would also entitle workers to mandatory training provided by their employer;
- **the 'Extended personal scope, strengthened requirements and new minimum rights' option**, which is the preferred option, being a combination of the two previous ones.

EPRS has published an [initial appraisal](#) of the impact assessment.

## The changes the proposal would bring

On 21 December 2017, the Commission adopted a [proposal](#) for a new directive aimed at ensuring more transparent and predictable working conditions across the EU. The proposal would replace the Written Statement Directive with a new instrument that would ensure transparency of working conditions for all workers and define new substantive rights to improve predictability and security of working conditions, including for workers in atypical, sometimes precarious employment, who are currently excluded from the scope of the directive.

The specific objectives of the proposal are:

1. to improve workers' access to information concerning their working conditions;

2. to improve working conditions for all workers, notably those in new and non-standard employment while ensuring scope for adaptability and labour market innovation;
3. to improve compliance with standards on working conditions through enhanced enforcement;
4. to improve labour market transparency without creating an excessive burden for undertakings of all sizes.

In practical terms, at the start of employment, workers would be provided with an updated and extended information package on their obligations and working conditions.

The proposal would also create new minimum standards to ensure that all workers, including those on atypical contracts (for instance domestic workers, marginal part-time workers or workers on very short contracts), could benefit from more predictability and clarity as regards their working conditions. This would be done through the introduction of new minimum rights, such as the possibility to request transition to a more stable form of employment and receive a reply in writing, or the right to mandatory training without a deduction from the salary.

The proposal intends to strengthen the means of enforcement that could be used as a last resort to resolve possible disagreements, should dialogue not suffice. It furthermore defines the notion of 'worker' based on established Court of Justice of the European Union (CJEU) case law. A worker is defined as 'a natural person who performs services for and under the direction of another person, in return of remuneration'.

The proposal is one of the Commission's key actions to follow up on its commitments under the [European Pillar of Social Rights](#). Among other objectives, the pillar seeks to bring the Member States' divergent social standards closer by updating them and by possibly setting minimum common standards. The proposal contributes to the pillar's principle 5 on 'Secure and adaptable employment' and principle 7 on 'Information about employment conditions and protection in the case of dismissals'.

With regard to its stated aim of ensuring transparent and predictable working conditions, the proposal also intends to attain coherence with other policies, in particular: [Directive 96/71/EC](#) on the posting of workers; [Council Directive 97/81/EC](#) on part-time work and [Council Directive 1999/70/EC](#) on fixed-term work; [Directive 2008/104/EC](#) on temporary agency work; the [EU platform](#) to support the fight against undeclared work; the [EU recommendation](#) for written traineeship agreements; [Directive 2003/88](#) on working time; the [Charter of Fundamental Rights](#) of the European Union; and the [Community Charter](#) of the Fundamental Social Rights of Workers.

## Advisory committees

The Economic and Social Committee (EESC) adopted its [opinion](#) at the plenary session of 23 May 2018. The EESC supports the Commission proposal in general and welcomes the extension of its scope to new forms of work. However, it states that the definition of 'employer' needs clarifying. The EESC welcomes the provisions related to minimum requirements on working conditions, notably regarding the length of the probationary period; restrictions on the prohibition of employment in parallel; minimum predictability of work; transitioning to another form of employment where available; and the provision of cost-free training where it is required for the worker.

The European Committee of the Regions (CoR) delivered its [opinion](#) on 5 July 2018, voicing support for any efforts to secure a minimum level of fair working conditions across the EU for all different forms of employment contracts. It recommended expanding the new substantive rights to include a ban on zero-hours contracts, the right to guaranteed working hours; it also recommended introducing more rights in connection with dismissal. Furthermore, the CoR highlighted the role of local and regional authorities in designing, implementing and evaluating measures in areas where they have key competences.

## National parliaments

The deadline for the submission of [reasoned opinions](#) on the grounds of subsidiarity was 6 March 2018. The Swedish Riksdag submitted its [reasoned opinion](#) on 5 March 2018, in which it stated that the proposed directive does not comply with the subsidiarity principle. The Riksdag underlined that the Member States' power in the field of labour law should be safeguarded, and that therefore issues in the field of employment law without a clear cross-border dimension should primarily be dealt with at national level. Furthermore, a common definition of the terms 'employer' and 'employee' could jeopardise the current Swedish system, in which the social partners bear prime responsibility for regulating labour market conditions.

## Stakeholders' views<sup>2</sup>

In both phases of the stakeholders' consultations, representatives of employees' organisations were in favour of clarifying and broadening the personal scope of the Written Statement Directive, in particular through removing exclusions and including criteria to assist with identifying the existence of an employment relationship. They also argued for the inclusion of self-employed workers in the scope of application of the revised directive. The European Trade Union Confederation ([ETUC](#)) welcomed the broadening the scope of the directive and the fact that a written document has to be provided to workers. It had, however, concerns that the proposal is not robust enough to give workers with precarious and atypical working arrangements the protection they need.

Employers were opposed to the proposal to extend the scope of the directive; to include a definition of 'worker'; to grant workers new minimum rights; to amend the information package to workers; and to reduce the two-month deadline for providing the written document. In voicing their concerns, they pointed out the proposal's possible negative impacts on flexibility of employment conditions and job creation, and stressed the proportionality and subsidiarity principles. The Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises ([UEAPME](#)) expressed strong concern over the proposal, arguing it has the potential to increase SMEs' administrative work, reduce flexibility and jeopardise job creation. UEAPME stressed that the definition of 'worker', 'employer' and 'employment relationship' does not respect the subsidiarity principle and makes its application at national level difficult. [BusinessEurope](#) was concerned about the broad definition of 'worker', which would create fundamental legal uncertainty by qualifying a consumer relationship as an employment relationship. Furthermore, it emphasised that the proposed minimum rights would introduce restrictions on companies with regard to what are often high-paid, high-skilled key staff.

## Legislative process

On 21 December 2017, the Commission adopted a proposal for a new directive for more transparent and predictable working conditions across the EU. On 18 January 2018, the referral of the dossier to the EMPL committee, with Enrique Calvet Chambon (ALDE, Spain) as rapporteur, was announced in the Parliament. On 29 May 2018, the rapporteur published his [draft report](#), which was adopted by EMPL on 18 October 2018. In November, the plenary confirmed the committee's decision to enter into interinstitutional negotiations.

The [report](#) raised the following main points:

- **scope of the directive:** the criteria applied by the CJEU for determining the status of a worker should be kept, while national authorities and national courts can decide upon the application of the scope according to specific situations. If domestic, on-demand, intermittent, voucher-based and platform workers, trainees and apprentices meet those criteria, they fall within the scope of the directive. The directive, however, does not apply to self-employed persons. Member States may decide not to apply the obligations under the directive to civil servants;

- **working hours:** if the contract does not provide for a standard working day or week, the employer should communicate the number of guaranteed paid hours and the remuneration for work performed in addition to the guaranteed hours;
- **conditions for providing information to the employee:** the deadline of the first working day can be extended by a week. All documents should be transmitted in written or electronic form;
- **probationary periods:** these should be no longer than 6 months (in case of fixed-term contracts of less than 12 months, 25 % of the expected duration of the contract) and should be interruptable in case of sickness or leave. Exceptionally, after consultation with the social partners, Member States may establish longer probationary periods, not exceeding 9 months, where the nature of the job justifies it;
- a set of measures that Member States can introduce when no legal measures are in place, in order to prevent abuse arising from the use of on-demand contracts and similar forms of work;
- **responsibility of the employer:** if, having accepted an assignment, a worker cannot provide services because of a delay for which the employer is responsible, the worker remains entitled to remuneration. This cannot take the form of a different assignment at a later date;
- **involvement of the social partners:** Member States shall involve the social partners in the implementation of this directive.

Within the Council, the proposal was discussed at the Social Questions Working Party meeting on 6 February 2018. Further discussions followed on 9 March, 15 May and 14 June. Ministers agreed on a [general approach](#) on the proposal on 21 June 2018.

The main points of this approach were:

- **duration of the minimum working period:** to increase the number of hours requested from eight hours per month to five hours per week;
- **exemption for workers in the public service:** enabling Member States to exclude some professions in the public sector (already well protected) from the scope of the directive (armed forces, police, judges, prosecutors, investigators and other law enforcement services);
- **unpredictability of the work:** replacing the wording 'most or entirely unpredictable work pattern' by 'the worker's work schedule is entirely or mostly variable';
- **timeframe to provide information:** instead of providing information on the first working day, a two-step approach would allow one calendar week to supply essential information and one month for remaining information;
- **favorable legal presumptions in case the worker does not receive information in writing in due time:** Member States would have more room for manoeuvre in implementing this provision;
- **definition of 'worker':** the presidency proposed to delete all the definitions in the directive, but maintain the references to ECJ case law;
- **exclusion of seafarers and sea fishermen:** exemptions were proposed from some provisions for this group of workers.

Trilogue negotiations started on 15 November 2018, once the Parliament had agreed its position.

On 7 February 2019, the Romanian Presidency of the Council and the European Parliament's negotiators reached a [provisional agreement](#) which was then endorsed by Coreper on 15 February.

According to the agreed text:

- essential information in written form is to be given to the worker between the first day of work and the seventh calendar day that follows. Supplementary information is to be given within 1 month;
- all workers working more than 3 hours per week over four weeks (i.e. over 12 hours per month) are to be covered by the directive;
- on objective grounds, certain groups of workers may be excluded from some of the provisions of the directive, (for instance civil servants, armed forces, emergency services and law enforcement services);
- the probationary period is limited to a maximum of 6 months, longer periods are only allowed in a case where this is in the interests of the worker or is justified by the nature of the work;
- after at least six months service with the same employer, the worker can request an employment status with more predictable and secure working conditions;
- workers may take up a job in parallel with another employer (exclusivity clauses are banned);
- workers with variable working schedules (for instance in the case of on-demand work) should know in advance when they will be requested to work;
- workers must receive training cost-free, when such training is required by EU or national legislation;
- specific definitions of worker, employer and employment relationship were removed from the final text.

The Parliament's EMPL committee approved the text on 19 February 2019. The Parliament is expected to vote on the provisional agreement in plenary in April 2019.

## EP SUPPORTING ANALYSIS

Mari Tuominen, [Transparent and predictable working conditions - Initial Appraisal of the Commission IA](#), EPRS Briefing, 2018.

## OTHER SOURCES

[Transparent and predictable working conditions in the European Union](#), European Parliament, Legislative Observatory (OEIL).

European Commission [Proposal for a directive of the European Parliament and the Council on transparent and predictable working conditions in the European Union](#), COM(2017) 797.

## ENDNOTES

- <sup>1</sup> In 1999, the 15 Member States at that time; in 2007, the 10 new Member States, and in 2009, Romania and Bulgaria.
- <sup>2</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

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