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## REPORT

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From:	Permanent Representatives Committee
To:	Council
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No. Cion doc.:	16018/17 + ADD1-ADD 2 - COM(2017) 797 final
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on transparent and predictable working conditions in the European Union - General approach

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### I. INTRODUCTION

On 21 December 2017 the Commission submitted a proposal for a Directive on Transparent and Predictable Working Conditions, revising and repealing Directive 91/533/EEC concerning the right for employees to be notified in writing of the essential aspects of the employment relationship ('Written Statement Directive'). The proposal provides for revised obligations to inform workers of the essential aspects of their employment relationship and defines a set of minimum rights for workers with a view to addressing the challenges brought by developments in the world of work since 1991. The modifications and new elements of the proposal have to be seen in the context of growing flexibilisation of the labour market, and in particular the increase in the proportion of 'non-standard' forms of employment. The initiative is one of the actions taken by the Commission in follow-up to the proclamation of the European Pillar of Social Rights.

The legal basis, Article 153(2)(b) in conjunction with Article 153(1)(b) TFEU, requires the Council to act by qualified majority, in accordance with the ordinary legislative procedure.

The European Parliament has not yet delivered its position at first reading.

The Economic and Social Committee adopted its opinion in plenary session on 23 May 2018.

The Committee of the Regions has not yet delivered its opinion.

## **II. DISCUSSIONS UNDER THE BULGARIAN PRESIDENCY**

Discussions on the proposal in the Social Questions Working Party (SQWP) started with the related Impact Assessment (IA). Member States' replies to the distributed questionnaire were examined and summarised in document 9412/18 ADD1.

The Presidency steered the discussions with the aim of clarifying the text and addressing delegations' main concerns. The intensive work concentrated on finding compromise solutions to accommodate various concerns raised by delegations in order to strike a proper balance in the text.

### **Main points discussed at the SQWP level**

#### (1) Derogation for less than a certain number of hours worked

The Commission proposed that Member States should be able to not apply the obligations contained in the proposal to workers with an employment relationship equal to or less than 8 hours per month. A number of delegations indicated that the period was too short. Some delegations also preferred to have a reference period counted in weeks.

The Presidency proposed increasing the number of hours worked to five hours per week on average in a reference period of four weeks.

(2) Exemption for certain workers of the public service

Many delegations outlined the specificities of some public sector professions and indicated that in many cases, such as armed forces, police, judges, prosecutors, investigators and other law enforcement services, the dedicated regimes that apply at national level would not be in line with the provisions contained in the proposal. They also emphasised that civil servants would already benefit from a very protective regime, and therefore do not represent the target population of Chapter III.

The Presidency proposed giving Member States the possibility of excluding on objective grounds certain categories of workers in public service positions from the obligations contained in Chapter III due to the specificities of their professions.

(3) Unpredictability of the work

The Commission proposed introducing different types of information obligations (Article 3(2)(1)) and safeguards (Article 9) if '*the worker's work schedule is entirely or mostly variable*'.

The Presidency replaced this notion by '*mostly or entirely unpredictable work pattern*'. Finding this wording clearer, a majority of delegations could support it.

(4) Timeframe to provide the information

The Commission proposed requiring all essential information on the employment relationship to be provided on the first working day. Several delegations supported the Commission proposal, but another group of delegations preferred to have a longer deadline of up to two months, as is currently the case.

The Presidency proposed a two-step approach: a first deadline of one calendar week for the most essential information, and a second deadline of one month for the rest of the information. This approach was supported by a majority of delegations.

(5) Legal presumptions

For cases where the worker does not receive the required information in writing in due time, the Commission proposed that Member States would either provide for a set of favourable presumptions for the worker or entrust a competent authority with handling complaints.

The Presidency tried to clarify this provision, and proposed a compromise giving Member States more room to manoeuvre on how to implement it, without being prescriptive on the procedure.

The discussions at the last SQWP meeting on 24 May were in a constructive spirit and most delegations broadly supported the Presidency compromise on these issues listed above. Other issues included the probationary period.

**Main points discussed at Coreper level**

(1) **Definition of a worker**

The proposal includes a definition of 'worker' as well as a definition of 'employer' and 'employment relationship'. The Commission proposal defines 'worker' according to the criteria developed by the European Court of Justice (ECJ), i.e. "*as a natural person who performs services, for and under the direction of another person, in return for remuneration*".

From the start of the discussions, a number of delegations expressed concerns with having a definition of 'worker' at Union level and expressed their preference for keeping a reference to national law as is the case in the Written Statement Directive of 1991.

The Presidency tried to clarify the definition in the recital and the article, adding the notion of subordination, replacing the notion of 'service' by 'work' and referring to the criteria developed by the ECJ. Considering this question more of a political nature, the Presidency submitted this issue to Coreper to find a solution.

At Coreper on 6 June, several delegations expressed their preference for not having definitions in the Directive. The Presidency proposed to delete the definitions of a worker, an employer and an employment relationship and maintain the reference to the ECJ case-law in a recital. At Coreper on June 13, as delegations showed division on the matter, the Presidency decided to refer it to the Council.

(2) **Exclusion of seafarers and sea fishermen**

The Commission has proposed that the obligations in relation to providing information about the employment relationship (Chapter II of the proposal) continue to apply to seafarers and sea fishermen, as is the case under the Written Statement Directive, without prejudice to the sectorial legislation. Some delegations have asked for these workers to be excluded from either the whole Directive or from parts of it which they consider not to be adapted to the specific nature of the sector regulated by sectorial legislation.

Supported by several delegations, the Presidency has introduced a targeted exemption from some provisions, which can be justified by objective grounds such as the specificities of the working relationships. At Coreper, a compromise was found by broadening the targeted exemption proposed.

**Outstanding issue for the Council**

At the last Coreper, the Presidency has decided to add in Article 1(2) on the definition of a worker, in brackets, a reference to national law and practice. Coreper invites the Council to decide whether or not to include this reference.

**Reservations on the text**

General scrutiny reservation: AT, BE, CZ, DE, DK, ES, HR, HU, IT, MT, NL, SE, UK.

Parliamentary reservation: DK and UK.

Linguistic reservation: DK and SE.

Further to the discussion at Coreper on 13 June, the latest Presidency compromise proposal can be found in the Annex to this Report. Changes compared to the previous Presidency compromise proposal (9830/18) are in **bold**.

### **III. CONCLUSION**

The Council (EPSCO) is invited to address the outstanding issue with a view to reaching a general approach at its session on 21 June 2018.

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2017/0355 (COD)

Proposal for a

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

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

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

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

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

- (2) Principle 7 of the European Pillar of Social Rights, proclaimed at Gothenburg on 17 November 2017, provides that workers have the right to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship, including any probationary period. It also provides that they have the right to access to effective and impartial dispute resolution and, in case of unjustified dismissal, a right to redress, including adequate compensation. Principle 5 provides that regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions and access to social protection and training. It also provides that employment relationships that lead to precarious working conditions are to be prevented, including by prohibiting abuse of atypical contracts, that any probationary period should be of reasonable duration and that the transition towards open-ended forms of employment is to be fostered.
- (3) Since the adoption of Council Directive 91/533/EEC<sup>3</sup>, labour markets have undergone far-reaching changes due to demographic developments and digitalisation, leading to the creation of new forms of employment, which have supported job creation and labour market growth. New forms of employment are often not as regular or stable as traditional employment relationships and lead to reduced predictability for the workers concerned, creating uncertainty as to applicable rights and social protection. In this evolving world of work, there is therefore an increased need for workers to be fully informed about their essential working conditions, which should occur in a written form and in a timely manner. In order adequately to frame the development of new forms of employment, workers in the Union should also be provided with a number of new minimum rights aimed at promoting security and predictability in employment relationships while achieving upward convergence across Member States and preserving labour market adaptability.

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



- (4) Pursuant to Directive 91/533/EEC the majority of workers in the Union have the right to receive written information about their working conditions. Directive 91/533/EEC does not however cover all workers in the Union. Moreover, gaps in protection have emerged for new forms of employment created as a result of labour market developments since 1991.
- (5) Minimum requirements relating to information on the essential aspects of the employment relationship and relating to working conditions that apply to every worker should therefore be established at Union level in order to guarantee all workers in the Union an adequate degree of transparency and predictability as regards their working conditions.
- (6) The Commission has undertaken a two-phase consultation with the social partners, in accordance with Article 154 of the Treaty, on the improvement of the scope and effectiveness of Directive 91/533/EEC and the broadening of its objectives in order to encompass new rights for workers. This did not result in any agreement among social partners to enter into negotiations on those matters. However, as confirmed by the outcome of the open public consultations carried out to seek the views of various stakeholders and citizens, it is important to take action at Union level in this area by modernising and adapting the current legal framework.
- (7) In its case law, the Court of Justice of the European Union has established criteria for determining the status of a worker [...] <sup>4</sup>. The interpretation of the Court of Justice of these criteria should be taken into account in the implementation of this Directive. Provided that they fulfil those criteria, domestic workers, on-demand workers, intermittent workers, voucher based-workers, platform workers, trainees and apprentices could come within scope of this Directive. Self-employed persons should not fall under the scope of this Directive since they do not fulfil these criteria.

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

- (7a)new It should be possible for Member States to provide, where justified on objective grounds, that certain provisions of this Directive are not to apply to certain categories of civil servants, **public emergency services**, the armed forces, police authorities, judges, prosecutors, investigators and other law enforcement services given the specific nature of the duties they are called to perform or of their employment conditions.
- (7b)new The requirements on employment in parallel, where incompatible with the work performed on board ships or fishing vessels, the requirements on minimum predictability of work, the requirements on workers sent in another Member State or third country, [...]the requirements on transition to another form of employment **and the requirement on providing information on the identity of the social security institution(s) receiving the social contributions** should not apply to seafarers and sea fishermen given the specificities of their employment conditions. For the purposes of this Directive, seafarers and fishermen as defined in Council Directives 2009/13/EC and (EU) 2017/159, respectively, should be considered as working in the Union when they work on board ships or fishing vessels, respectively, registered in a Member State and/or flying the flag of a Member State.
- (8) In view of the increasing number of workers excluded from the scope of Directive 91/533/EEC on the basis of derogations made by Member States under Article 1 of that Directive, it is necessary to replace those derogations with a possibility for Member States not to apply the provisions of the Directive to a work relationship equal to or less than 5 hours per week on average in a reference period of four weeks. [...]
- (9) Due to the unpredictability of on-demand work including zero-hour contracts, the derogation of 5 hours per week on average in a reference period of four weeks should not be used for employment relationships in which no guaranteed amount of paid work is determined before the start of the employment.

- (10) Several different natural or legal persons or other entities may in practice assume the functions and responsibilities of an employer. Member States should remain free to determine more precisely the person(s) who are considered totally or partially responsible for the execution of the obligations that this Directive lays down for employers, as long as all those obligations are fulfilled. Member States should also be able to decide that some or all of these obligations are to be assigned to a natural or legal person who is not party to the employment relationship.
- (10a) Member States should be able to establish specific rules to exclude individuals acting as employers for domestic workers in the household from the obligations to consider and respond to a request for a different type of employment, to provide cost-free mandatory training, and from coverage of the redress mechanism based on favourable presumptions in the case of missing information in the documents that should be provided to the worker under this Directive.
- (11) Directive 91/533/EEC introduced a minimum list of essential aspects on which workers have to be informed in writing. It is necessary to adapt that list in order to take account of developments on the labour market, in particular the growth of non-standard forms of employment.
- (11a) It should be possible for information on the training entitlement provided by the employer to take the form of information that includes the number of training days per year, if any, to which the worker is entitled and/or information about the employer's general training policy.
- (12) Information on working time should be consistent with the provisions of Directive 2003/88/EC of the European Parliament and of the Council<sup>5</sup>, and include information on breaks, daily rest, weekly rest and the amount of paid leave.

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

- (13) Information on remuneration to be provided should include all elements of the remuneration, including contributions in cash or kind, directly or indirectly received by the worker in respect of his or her work. The provision of such information should be without prejudice to the freedom for employers to provide for additional elements of remuneration such as one-off payments. The fact that elements of remuneration due by law or collective agreement have not been included in that information should not constitute a reason for not providing them to the worker.
- (14) If it is not possible to indicate a fixed work schedule due to the nature of the employment, workers should know how their working time will be established, including the time slots in which they may be called to work and the minimum advance notice they should receive.
- (15) Information on social security systems should include information on the identity of the social security institution(s) receiving the social security contributions on, where relevant, sickness, maternity and equivalent paternity benefits, accident at work and occupational diseases benefits, and old-age, invalidity, survivors', unemployment, pre-retirement and family benefits. Information on the social security protection provided by the employer should include, where relevant, the fact of coverage by supplementary pension schemes within the meaning of Council Directive 98/49/EC<sup>6</sup> and Directive 2014/50/EU of the European Parliament and of the Council<sup>7</sup>.

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

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

- (16) Workers should have the right to be informed about their rights and obligations resulting from the employment relationship in writing at the start of employment. The basic information should therefore reach them within a calendar week from the first working day. The rest of the information should reach them within one month from the first working day. The first working day should be understood as the actual start of performance of work by the worker in the employment relationship.
- (16a) With regard to the increasing use of digital communication tools, where this Directive refers to information to be provided in writing, this could take an electronic form.
- (17) In order to help employers to provide timely information, it should be possible for Member States to ensure the availability of templates at national level including relevant and sufficiently comprehensive information on the legal framework applicable. These templates could be further developed at sectoral or local level, by national authorities and social partners.
- (18) Workers sent abroad should receive additional information specific to their situation. For successive work assignments in several Member States or third countries, it should be possible for that information to be grouped for several assignments before the first departure and subsequently modified in case of change. Where they qualify as posted workers under Directive 96/71/EC of the European Parliament and of the Council<sup>8</sup>, they should also be notified of the single national website developed by the host Member State where they will find the relevant information on the working conditions applying to their situation. Unless Member States provide otherwise, those obligations apply if the duration of the work period abroad is more than four consecutive weeks.

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

- (19) Probationary periods allow employers to verify that workers are suitable for the position for which they have been engaged while providing them with accompanying support. Any entry into the labour market or transition to a new position should not be subject to prolonged insecurity. As established in the European Pillar of Social Rights, probationary periods should therefore be of reasonable duration. A substantial number of Member States have established a general maximum duration of probation of between three and six months, which should be considered reasonable. It should be possible for probationary periods to last longer than six months where this is justified by the nature of the employment such as for managerial or executive positions or public service positions or where this is in the interest of the worker, such as in the context of specific measures promoting permanent employment notably for young workers. It should also be possible for probationary periods to be extended correspondingly in cases where the worker has been absent from work during the probationary period, for instance due to sickness or leave, to enable the employer to verify the suitability of the worker for the task in question.
- (20) Employers should not prohibit workers from taking up employment with other employers, outside the time spent working for them. It should be possible for Member States to lay down conditions for the use of incompatibility restrictions, understood as restrictions on working for other employers for objective reasons, such as the protection of business secrets or the avoidance of conflicts of interests.
- (21) Workers whose work pattern is entirely or mostly unpredictable should benefit from a minimum predictability of work where the work schedule is mainly determined by the employer, be it directly, for instance by allocating work assignments, or indirectly, for instance by requiring the worker to respond to clients' requests.
- (22) Reference hours and days, understood as time slots where work can take place at the request of the employer, should be established in writing at the start of the employment relationship.

- (23) A reasonable minimum advance notice, understood as the period of time between the moment a worker is informed about a new work assignment and the moment the assignment starts, constitutes another necessary element of predictability of work for employment relationships with work patterns which are entirely or mostly unpredictable and mostly determined by the employer. The length of the advance notice period can vary according to the needs of the sector concerned; it should also be possible to foresee that its length can be reduced in emergency situations, while ensuring the adequate protection of workers. It applies without prejudice to Directive 2002/15/EC of the European Parliament and of the Council.<sup>9</sup>
- (24) Workers should have the possibility to refuse a work assignment if it falls outside of the reference hours and days or the worker has not been notified within the minimum advance notice without suffering adverse consequences for this refusal. Workers should also have the possibility to accept the work assignment if they so wish.

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

- (25) While non-standard forms of employment offer opportunities for workers to enter or remain in the labour market, some workers are at risk of being trapped in unpredictable and insecure employment. Where employers have the possibility to offer full-time or open-ended labour contracts to workers in non-standard forms of employment, a transition to more secure forms of employment should in line with the principles established in the European Pillar of Social Rights be promoted. Workers should be able to request another more predictable and secure form of employment, where available, and receive a written response from the employer, which takes into account the needs of the employer and of the worker. Member States should have the possibility to limit the frequency of such requests. This Directive should not prevent Member States from establishing that, in the case of public service positions for which entry is by competitive examination, those positions are not to be considered as available on simple request of the worker, and so fall outside the scope of the right to request a more predictable and secure working conditions.
- (26) Where employers are required by legislation or collective agreements to provide training to workers to carry out the work for which they are employed, it is important to ensure that such training is provided equally, including to those in non-standard forms of employment. The costs of such training should not be charged to the worker nor withheld or deducted from the worker's remuneration. This obligation does not cover vocational training or training required for workers to obtain, maintain or renew a professional qualification as long as the employer is not required by Union or national legislation or collective agreement to provide it to the worker.
- (27) The autonomy of the social partners and their capacity as representatives of workers and employers should be respected. It should therefore be possible for social partners to consider that in specific sectors or situations different provisions are more appropriate, for the pursuit of the purpose of this Directive, than certain minimum standards set in this Directive. Member States should therefore be able to allow social partners to maintain, negotiate, conclude and enforce collective agreements which differ from certain provisions contained in this Directive, as long as the overall level of protection of workers is not lowered.



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

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

- (35) Since the objectives of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of the need to establish common minimum requirements, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (36) This Directive lays down minimum requirements, thus leaving untouched Member States' prerogative to introduce and maintain more favourable provisions. Rights acquired under the existing legal framework should continue to apply, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights set out in existing national or Union legislation in this field, nor can it constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this Directive. In particular, it should not serve as grounds for the introduction of zero hours or similar types of employment contracts.
- (37) In implementing this Directive Member States should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized enterprises. Member States are therefore invited to assess the impact of their transposition act on small and medium-sized enterprises in order to make sure that they are not disproportionately affected, giving specific attention to micro-enterprises and to the administrative burden, and to publish the results of such assessments.
- (38) The Member States may entrust social partners with the implementation of this Directive, where social partners jointly request to do so and as long as the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive.
- (39) In view of the substantial changes introduced by this Directive at the level of purpose, scope and content, it is not appropriate to amend Directive 91/533/EEC. Directive 91/533/EEC should therefore be repealed.

- (40) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>10</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

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

1. The purpose of this Directive is to improve working conditions by promoting more secure and predictable employment while ensuring labour market adaptability.
2. This Directive lays down minimum rights that apply to every worker in the Union[, **who have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State**].
3. Member States may decide not to apply the obligations in this Directive to workers who have an employment relationship equal to or less than 5 hours per week on average in a reference period of four weeks. Time worked with all employers forming or belonging to the same enterprise, group or entity shall count towards that 5 hours average.
4. Paragraph 3 shall not apply to an employment relationship where no guaranteed amount of paid work is predetermined before the employment starts.

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

5. Member States may determine which persons are responsible for the execution of the obligations for employers laid down by this Directive as long as all those obligations are fulfilled. They may also decide that all or part of those obligations shall be assigned to a natural or legal person who is not party to the employment relationship. This paragraph is without prejudice to Directive 2008/104/EC of the European Parliament and of the Council<sup>11</sup>.
- 5a(new) Member States may provide, on objective grounds, that provisions laid down in Chapter III shall not apply to civil servants, **public emergency services**, the armed forces, and to police authorities, judges, prosecutors, investigators and other law enforcement services.
6. Member States may decide not to apply the obligations set out in Articles 10 and 11 and Article 14(1)(a) to natural persons in households acting as employers where work is performed for those households.
7. Chapter II of this Directive applies to seafarers and sea fishermen without prejudice to Council Directive 2009/13/EC<sup>12</sup> and Council Directive (EU) 2017/159<sup>13</sup>, respectively. The obligations set out in Articles 3(2)(l) **and (n)**, 6, 8, 9 and 10 shall not apply to seafarers and sea fishermen.

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

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

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

## *Article 2*

### ***Definitions***

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

### *Article 2a(new)*

All documents may be provided and transmitted electronically as long as they are easily accessible by the worker and can be stored and printed.

**CHAPTER II**  
**INFORMATION ON THE EMPLOYMENT RELATIONSHIP**

*Article 3*

*Obligation to provide information*

1. Member States shall ensure that employers are required to inform workers of the essential aspects of the employment relationship.
2. The information referred to in paragraph 1 shall include:
  - (a) the identities of the parties to the employment relationship;
  - (b) the place of work; where there is no fixed or main place of work, the principle that the worker is employed at various places or is free to determine his or her place of work, and the registered place of business or, where appropriate, the domicile of the employer;
  - (c) (i) the title, grade, nature or category of work for which the worker is employed; or  
(ii) a brief specification or description of the work;
  - (d) the date of commencement of the employment relationship;
  - (e) in the case of a temporary employment relationship, the end date or the expected duration thereof;
  - (f) the duration and conditions of the probationary period, if any;
  - (g) **the** training entitlement provided by the employer, if any;
  - (h) the amount of paid leave to which the worker is entitled or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;

- (i) the procedure, including the length of the period of notice, to be observed by the employer and the worker should their employment relationship be terminated or, where the length of the period of notice cannot be indicated when the information is given, the method for determining such period of notice;
  - (j) the initial basic amount, any other component elements, the frequency and method of payment of the remuneration to which the worker is entitled;
  - (k) if the work pattern is entirely or mostly predictable, the length of the worker's standard working day or week and any arrangements for overtime and its remuneration;
  - (l) if the work pattern is entirely or mostly unpredictable [...], the principle that the work pattern is unpredictable, the amount of guaranteed paid hours, the remuneration of the work performed in addition to the guaranteed hours and:
    - (i) the reference hours and days within which the worker may be required to work;
    - (ii) the minimum advance notice the worker shall receive before the start of a work assignment;
  - (m) any collective agreements governing the worker's conditions of work; in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of the competent body or joint institution within which the agreements were concluded;
  - (n) the identity of the social security institution(s) receiving the social contributions attached to the employment relationship and any protection relating to social security provided by the employer.
3. The information referred to in paragraph 2(f) to (n) may, where appropriate, be given in the form of a reference to the laws, regulations and administrative or statutory provisions or collective agreements governing those particular points.



## *Article 4*

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

1. The information referred to in Article 3(2 a, b, c, d, e, f, j, k and l) shall be provided individually to the worker in the form of one or more documents at the latest within one calendar week from the first working day. The other information referred to in Article 3(2) shall be provided individually to the worker in the form of a document within one month from the first working day.
2. Member States may develop templates and models for the document(s) referred to in paragraph 1 and put them at the disposal of workers and employers including by making them available on a single official national website and by other suitable means.
3. Member States shall ensure that the information on the laws, regulations and administrative or statutory provisions or universally applicable collective agreements governing the legal framework applicable which are to be communicated by employers is made generally available free of charge in a clear, transparent, comprehensive and easily accessible way at a distance and by electronic means, including through existing online portals for Union citizens and businesses.

## *Article 5*

### ***Modification of the employment relationship***

1. Member States shall ensure that any change in the aspects of the employment relationship referred to in Article 3(2) and to the additional information for workers sent to another Member State or a third country in Article 6 shall be provided in the form of a document by the employer to the worker at the earliest opportunity and at the latest on the day it takes effect.

2. The written document referred to in paragraph 1 shall not apply to changes that merely reflect a change in the laws, regulations and administrative or statutory provisions or collective [...] agreements cited in the documents referred to in Article 4(1), and, where relevant, in Article 6.

### *Article 6*

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

1. Member States shall ensure that, where a worker is required to work in a Member State or third country other than the Member State in which he or she habitually works, the documents referred to in Article 4(1) shall be provided before his or her departure and shall include at least the following additional information:
  - (a) the country or countries in which the work abroad is to be performed and its duration;
  - (b) the currency to be used for the payment of remuneration;
  - (c) where applicable, the benefits in cash or kind attendant on the work assignment(s);
  - (d) where applicable, the conditions governing the worker's repatriation.
2. Member States shall ensure that a posted worker covered by Directive 96/71/EC shall in addition be notified of:
  - (a) the remuneration to which the worker is entitled in accordance with the applicable law of the host Member State;
  - (aa) where applicable, any allowances specific to posting and any arrangements for reimbursing expenditure on travel, board and lodging;

- (b) the link to the official national website(s) developed by the host Member State(s) pursuant to Article 5(2) of Directive 2014/67/EU of the European Parliament and of the Council<sup>14</sup>.
3. The information referred to in paragraph 1(b) and 2(a) may, where appropriate, be given in the form of a reference to the laws, regulations and administrative or statutory provisions or collective agreements governing those particular points.
4. Unless Member States provide otherwise, paragraphs 1 and 2 shall not apply if the duration of each work period outside the Member State in which the worker habitually works is four consecutive weeks or less.

### CHAPTER III

#### MINIMUM REQUIREMENTS RELATING TO WORKING CONDITIONS

##### *Article 7*

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

1. Member States shall ensure that, where an employment relationship is subject to a probationary period as defined in national legislation and/or practice, that period shall not exceed six months.
2. Member States may provide for longer probationary periods in cases where this is justified by the nature of the employment or is in the interest of the worker. In cases where the worker has been absent from work during the probationary period, Member States may provide that the probationary period can be extended correspondingly, in relation to the duration of the absence.

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

## *Article 8*

### ***Employment in parallel***

1. Member States shall ensure that an employer shall not prohibit a worker from taking up employment with other employers, outside the work schedule established with that employer.
2. Member States may however lay down conditions of incompatibility where such restrictions are justified by legitimate reasons such as the protection of business secrets or the avoidance of conflicts of interests.

## *Article 9*

### ***Minimum predictability of work***

Member States shall ensure that where a worker's work pattern is entirely or mostly unpredictable [...] the worker may be required to work by the employer only:

- (a) if work takes place within predetermined reference hours and reference days, established in accordance with Article 3(2)(1)(i), and
- (b) if the worker is informed by his or her employer of a work assignment with a reasonable period in advance, established in accordance with Article 3(2)(1)(ii).

Member states may lay down modalities for the application of this article, in accordance with national law, collective agreements and/or practice.

## *Article 10*

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

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

## *Article 11*

### ***Training***

Member States shall ensure that where an employer is required by Union or national legislation or relevant collective agreements to provide training to a worker to carry out the work for which he or she is employed, such training shall be provided cost-free to the worker.

## *Article 12*

### ***Collective agreements***

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

**CHAPTER V**  
**HORIZONTAL PROVISIONS**

*Article 13*

[...]

*Article 14*

***Legal presumption and early settlement mechanism***

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

*Article 15*

***Right to redress***

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

## *Article 16*

### ***Protection against adverse treatment or consequences***

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

## *Article 17*

### ***Protection from dismissal and burden of proof***

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

6. Paragraph 3 shall not apply to criminal procedures, unless otherwise provided by the Member State.

#### *Article 18*

#### *Penalties*

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

### **CHAPTER VI**

#### **FINAL PROVISIONS**

#### *Article 19*

#### *More favourable provisions*

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



## *Article 20*

### ***Implementation***

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

## *Article 21*

### ***Transitional arrangements***

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

*Article 22*

***Review by the Commission***

By [entry into force date + 9 years], the Commission shall, in consultation with the Member States and social partners at Union level and taking into account the impact on small and medium-sized enterprises, review the application of this Directive with a view to proposing, where appropriate, the necessary amendments.

*Article 23*

***Repeal***

Directive 91/533/EEC shall be repealed with effect from [entry into force date + 3 years]. References to the repealed Directive shall be construed as references to this Directive.

*Article 24*

***Entry into force***

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

*Article 25*

***Addresses***

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*For the Council*

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