Council of the European Union

Brussels, 29 January 2018
(OR. en)

5603/18

Interinstitutional File:
2017/0355 (COD)

SOC 34
EMPL 24
DIGIT 6
CODEC 90

NOTE

From:	General Secretariat of the Council
To:	Working Party on Social Questions
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

With a view to the Social Questions Working Party meeting on 6 February 2018, delegations will find attached the text of the Commission's proposal.

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(1)(b) and (2)(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[1],

Having regard to the opinion of the Committee of the Regions[2],

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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1 OJ C , , p. .
2 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, and that they have the right to access to effective and impartial dispute resolution and, in case of unjustified dismissal, a right to redress, including adequate compensation. 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, access to social protection and training, that employment relationships that lead to precarious working conditions is 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,[3] 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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[3] Council Directive 91/533/EC 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 on the improvement of the scope and effectiveness of Directive 91/533/EEC and the broadening of its objectives in order to insert new rights for workers, in accordance with Article 154 of the Treaty. 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 the Union level in this area by modernising and adapting the current legal framework.

(7) In order to ensure effectiveness of the rights provided by the Union law, the personal scope of Directive 91/533/EEC should be updated. In its case law, the Court of Justice of the European Union has established criteria for determining the status of a worker[4] which are appropriate for determining the personal scope of application of this Directive. The definition of worker in Article 2(1) is based on these criteria. They ensure a uniform implementation of the personal scope of the Directive while leaving it to national authorities and courts to apply it to specific situations. 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.

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

(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 these derogations with a possibility for Member States not to apply the provisions of the Directive to a work relationship equal to or less than 8 hours in total in a reference period of one month. That derogation does not affect the definition of a worker as provided for in Article 2(1).

(9) Due to the unpredictability of on-demand work including zero-hour contracts, the derogation of 8 hours per month 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 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. 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 written statement.

(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.

(12) Information on working time should be consistent with the provisions of Directive 2003/88/EC of the European Parliament and of the Council,[5] and include information on breaks, daily rest, weekly rest and the amount of paid leave.

(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 work schedule 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, where relevant, sickness, maternity and equivalent, parental, paternity, old-age, invalidity, survivors', unemployment, pre-retirement or family benefits. Information on social security protection provided by the employer should include, where relevant, coverage by supplementary pension schemes within the meaning of Council Directive 98/49/EC[6] and Directive 2014/50/EU of the European Parliament and of the Council.[7]

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5 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).

6 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).

7 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 relevant information should therefore reach them at the latest on the first day of the employment.

(17) In order to help employers to provide timely information, Member States should ensure the availability of templates at national level including relevant and sufficiently comprehensive information on the legal framework applicable. These templates may be further developed at sectoral or local level, by national authorities and social partners.

(18) Workers posted or sent abroad should receive additional information specific to their situation. For successive work assignments in several Member States or third countries, such as in international road transport, that information may 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,[8] 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, these obligations apply if the duration of the work period abroad is more than four consecutive weeks.

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[8] 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 and training. Such periods may be accompanied by reduced protection against dismissal. 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 between three and six months, which should be considered reasonable. Probationary periods may be longer than six months where this is justified by the nature of the employment such as for managerial positions and where this is in the interest of the worker, such as in the case of long illness or in the context of specific measures promoting permanent employment notably for young workers.

(20) Employers should not prohibit workers from taking up employment with other employers, outside the time spent working for them, within the limits set out in Directive 2003/88/EC of the European Parliament and of the Council.[9] Incompatibility clauses, understood as a restriction on working for specific categories of employers, may be necessary for objective reasons, such as the protection of business secrets or the avoidance of conflicts of interests.

(21) Workers whose work schedule is mostly variable 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.

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[9] 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).

(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 schedule which are variable or mostly determined by the employer. The length of the advance notice period may vary according to the needs of sectors, while ensuring adequate protection of workers. It applies without prejudice to Directive 2002/15/EC of the European Parliament and of the Council.[10]

(24) Workers should have the possibility to refuse a work assignment if it falls outside of the reference hours and days or 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.

(25) Where employers have the possibility to offer full-time or open-ended labour contracts to workers in non-standard forms of employment, a transition to more secure forms of employment should be promoted. 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.

(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.

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[10] 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).

(27) Social partners may consider that in specific sectors or situations different provisions are more appropriate, for the pursuit of the purpose of this Directive, than the minimum standards set in Chapter Three of this Directive. Member States should therefore be able to allow social partners to conclude collective agreements modifying the provisions contained in that chapter, 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. As regards Directive 91/533/EEC, the REFIT evaluation[11] confirmed that strengthened enforcement mechanisms could improve its effectiveness. It 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 to ensure workers are informed about their essential features of their employment relationship. It is therefore necessary to introduce enforcement provisions which ensure the use either of favourable presumptions where information about the employment relationship is not provided, or of an administrative procedure under which the employer may be required to provide the missing information and subject to sanction if it does not. That redress should be subject to a procedure by which the employer is notified that information is missing and has 15 days in which to supply complete and correct information.

(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 anti-discrimination and 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 and a right to redress, including adequate compensation, reflecting the Principle 7 of the European Pillar of Social Rights.

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[11] SWD(2017)205 final, page 26.

(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 with 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.

(34) Member States should provide for effective, proportionate and dissuasive penalties for breaches of the obligations under this Directive.

(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.

(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 undertakings. Member States are therefore invited to assess the impact of their transposition act on SMEs in order to make sure that SMEs are not disproportionately affected, with specific attention for micro-enterprises and for 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,[12] 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,

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[12] OJ C 369, 17.12.2011, p. 14.

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.

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 8 hours in total in a reference period of one month. Time worked with all employers forming or belonging to the same enterprise, group or entity shall count towards that 8 hour period.

4. Paragraph 3 shall not apply to an employment relationship where no guaranteed amount of paid work is predetermined before the employment starts.

5. Member States may determine which persons are responsible for the execution of the obligations for employers laid down by this Directive as long as all those obligations are fulfilled. They may also decide that all or part of these 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.

6. Member States may decide not to apply the obligations set out in Articles 10 and 11 and Article 14(a) to natural persons belonging to a household where work is performed for that household.

7. Chapter II of this Directive applies to seafarers and fishermen without prejudice to Council Directive 2009/13/EC and Council Directive (EU) 2017/159, respectively.

Article 2

Definitions

1. For the purposes of this Directive, the following definitions shall apply:

   (a) ‘worker’ means a natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration;

   (b) 'employer' means one or more natural or legal person(s) who is or are directly or indirectly party to an employment relationship with a worker;

   (c) 'employment relationship' means the work relationship between workers and employers as defined above;

   (d) 'work schedule' means the schedule determining 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.

2. For the purposes of this Directive the terms 'microenterprise', 'small enterprise' and 'medium-sized enterprise' shall have the meaning set out in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises[13] or in any subsequent act replacing that Recommendation.

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[13] OJ L 124/36, 20.05.2003.

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 the 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) any training entitlement provided by the employer;

   (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 schedule is entirely or mostly not variable, the length of the worker's standard working day or week and any arrangements for overtime and its remuneration;

(l) if the work schedule is entirely or mostly variable, the principle that the work schedule is variable, the amount of guaranteed paid hours, the remuneration of work performed in addition to the guaranteed hours and, if the work schedule is entirely or mostly determined, by the employer:

(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 social security institution(s) receiving the social contributions attached to the employment relationship and any protection relating to social security provided by the employer.

3. The information referred to in paragraph 2(f) to (k) and (n) may, where appropriate, be given in the form of a reference to the laws, regulations and administrative or statutory provisions or collective agreements governing those particular points.

Article 4

Timing and means of information

1. The information referred to in Article 3(2) shall be provided individually to the worker in the form of a document at the latest on the first day of the employment relationship. That document may be provided and transmitted electronically as long as it is easily accessible by the worker and can be stored and printed.

2. Member States shall develop templates and models for the document 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 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

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 posted or sent abroad 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.

Article 6

Additional information for workers posted or sent abroad

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 document 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), which includes in the case of posted workers covered by Directive 96/71/EC any allowances specific to posting and any arrangements for reimbursing expenditure on travel, board and lodging;

   (d) where applicable, the conditions governing the worker's repatriation.

2. Member States shall ensure that, if the worker sent abroad is a posted worker covered by Directive 96/71/EC, he or she 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;

   (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.

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, that period shall not exceed six months, including any extension.

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.

Article 8

Employment in parallel

1. Member States shall ensure that an employer shall not prohibit workers from taking up employment with other employers, outside the work schedule established with that employer.

2. Employers 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 schedule is entirely or mostly variable and entirely or mostly determined by the employer, 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 writing at the start of the employment relationship, in accordance with Article 3(2)(l)(i), and

(b) if the worker is informed by their employer of a work assignment a reasonable period in advance, in accordance with Article 3(2)(l)(ii).

Article 10

Transition to another form of employment

1. Member States shall ensure that workers with at least six months' seniority with the same employer may request a form of employment with more predictable and secure working conditions where available.

2. The employer shall provide 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 employers are required by Union or national legislation or relevant collective agreements to provide training to workers to carry out the work for which they are employed, such training shall be provided cost-free to the worker.

Chapter IV

Collective agreements

Article 12

Collective agreements

Member States may allow social partners to conclude 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

Compliance

Member States shall take all necessary measures to ensure that provisions contrary to this Directive in individual or collective agreements, internal rules of undertakings, or any other arrangements shall be declared null and void or are amended in order to bring them into line with the provisions of this Directive.

Article 14

Legal presumption and early settlement mechanism

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), Article 5, or Article 6, and the employer has failed to rectify that omission within 15 days of its notification, one of the following systems shall apply:

(a) the worker shall benefit from favourable presumptions defined by the Member State. Where the information provided did not include the information referred to in points (e), (f), (k) or (l) of Article 3(2), the favourable presumptions shall 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, respectively. 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 in a timely manner. If the competent authority finds that the complaint is justified, it shall order the relevant employer(s) to provide the missing information. If the employer does not provide the missing information within 15 days following receipt of the order, the authority shall be able to impose an appropriate administrative penalty, even if the employment relationship has ended. Employers shall have the possibility to lodge an administrative appeal against the decision imposing the penalty. Member States may designate existing bodies as competent authorities.

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, including adequate compensation, 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 legal 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 competent body to investigate the facts of the case.

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

Article 18

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the 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. Member States shall take all measures necessary to ensure that those penalties are applied. Penalties shall be effective, proportionate and dissuasive. They may take the form of a fine. They may also comprise payment of compensation.

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 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 adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by [entry into force date + 2 years], or shall ensure that the social partners introduce the required provisions by way of an agreement, the Member States being obliged to take the necessary steps enabling them at all times to guarantee the results imposed by this Directive.

   They shall forthwith inform the Commission thereof.

2. When Member States adopt those measures, 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.

Article 21

Transitional arrangements

The rights and obligations set out in this Directive shall apply to existing employment relationships as from [entry into force date + 2 years]. However, employers shall provide or complement the documents referred to in Article 4(1), Article 5 and Article 6 only upon request of a worker. The absence of such request shall not have the effect of excluding workers from the minimum rights established under this Directive.

Article 22

Review by the Commission

By [entry into force date + 8 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 + 2 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*