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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on transparent and predictable working conditions in the European Union - Outcome of the European Parliament's first reading (Strasbourg, 15 to 18 April 2019)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p. 5.

In this context, the rapporteur, Enrique CALVET CHAMBON (ALDE, ES), presented a compromise amendment (amendment 134) to the proposal for a Directive on behalf of the Committee on Employment and Social Affairs. This amendment had been agreed during the informal contacts referred to above.

In addition, the GUE/NGL Group tabled five amendments (amendments 136-140).

II. VOTE

When it voted on 16 April 2019, the plenary adopted the compromise amendment (amendment 134) to the proposal for a Directive. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Transparent and predictable working conditions in the European Union *I**

European Parliament legislative resolution of 16 April 2019 on the proposal for a directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union (COM(2017)0797 – C8-0006/2018 – 2017/0355(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0797),
- having regard to Article 294(2) and Article 153(1)(b) and (2)(b) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0006/2018),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
- having regard to the opinion of the European Economic and Social Committee of 23 May 2018¹,
- having regard to the opinion of the Committee of the Regions of 5 July 2018²,
- having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 18 February 2019 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rule 59 of its Rules of Procedure,
- having regard to the report of the Committee on Employment and Social Affairs and also the opinions of the Committee on Legal Affairs and the Committee on Women's Rights and Gender Equality (A8-0355/2018),

¹ OJ C 283, 10.8.2018, p. 39.

² OJ C 387, 25.10.2018, p. 53.

1. Adopts its position at first reading hereinafter set out;
2. Takes note of the statement by the Commission annexed to this resolution;
3. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 16 April 2019 with a view to the adoption of Directive (EU) 2019/... 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 point (b) of *Article 153(2), in conjunction with point (b) of Article 153(1)*, 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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 283, 10.8.2018, p. 39.

² OJ C 387, 25.10.2018, p. 53.

³ Position of the European Parliament of 16 April 2019.

Whereas:

- (1) Article 31 of the Charter of Fundamental Rights of the European Union provides that every worker has the right to working conditions which respect his or her health, safety and dignity, to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.
- (2) ***Principle No 5 of the European Pillar of Social Rights, proclaimed at Gothenburg on 17 November 2017, 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, and that the transition towards open-ended forms of employment is to be fostered; that, in accordance with legislation and collective agreements, the necessary flexibility for employers to adapt swiftly to changes in the economic context is to be ensured; that innovative forms of work that ensure quality working conditions are to be fostered, that entrepreneurship and self-employment are to be encouraged and that occupational mobility is to be facilitated; and that employment relationships that lead to precarious working conditions are to be prevented, including by prohibiting abuse of atypical contracts, and that any probationary period is to be of reasonable duration.***

- (3) *Principle No 7 of the European Pillar of Social Rights 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; that prior to any dismissal they are entitled to be informed of the reasons and given a reasonable period of notice; and that they have the right to access to effective and impartial dispute resolution and, in the case of unjustified dismissal, a right to redress, including adequate compensation.*
- (4) Since the adoption of Council Directive 91/533/EEC¹, labour markets have undergone far-reaching changes due to demographic developments and digitalisation leading to the creation of new forms of employment, which have enhanced *innovation*, job creation and labour market growth. Some new forms of employment *vary significantly from* traditional employment relationships *with regard to predictability* ■ , creating uncertainty *with regard to the* applicable rights and *the* social protection of *the workers concerned*. 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 *timely manner and in* written form *to which workers have easy access*. 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 *aiming to promote* security and predictability in employment relationships while achieving upward convergence across Member States and preserving labour market adaptability.

¹ 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).

- (5) 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 apply to 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.
- (6) 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, ***while maintaining reasonable flexibility of non-standard employment, thus preserving its benefits to workers and employers.***
- (7) The Commission has undertaken a two-phase consultation with the social partners, ***in accordance with Article 154 of the Treaty on the Functioning of the European Union,*** on the improvement of the scope and effectiveness of Directive 91/533/EEC and the broadening of its objectives in order to establish new rights for workers ■ . This did not result in an agreement among the social partners to enter into negotiations on those matters. However, as confirmed by the outcome of the open public consultations that sought 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 ***to new developments.***

- (8) ■ In its case law, the Court of Justice of the European Union (Court of Justice) has established criteria for determining the status of a worker¹ ■ . ***The interpretation of the Court of Justice of those 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 fall within the scope of this Directive. ***Genuinely self-employed persons should not fall within the scope of this Directive since they do not fulfil those criteria. The abuse of the status of self-employed persons, as defined in national law, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. Bogus self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations. Such persons should fall within the scope of this Directive. The determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of the work and not by the parties' description of the relationship.***

¹ **Judgments of the Court of Justice of 3 July 1986, *Deborah Lawrie-Blum v Land Baden-Württemberg*, C-66/85, ECLI:EU:C:1986:284; 14 October 2010, *Union Syndicale Solidaires Isère v Premier ministre and Others*, C-428/09, ECLI:EU:C:2010:612; 9 July 2015, *Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH*, C-229/14, ECLI:EU:C:2015:455; 4 December 2014, *FNV Kunsten Informatie en Media v Staat der Nederlanden*, C-413/13, ECLI:EU:C:2014:2411; and 17 November 2016, *Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH*, C-216/15, ECLI:EU:C:2016:883.**

- (9) *It should be possible for Member States to provide, where justified on objective grounds, for certain provisions of this Directive not to apply to certain categories of civil servants, public emergency services, the armed forces, police authorities, judges, prosecutors, investigators or other law enforcement services, given the specific nature of the duties that they are called on to perform or of their employment conditions.*
- (10) *The requirements laid down in this Directive with regard to the following matters should not apply to seafarers or sea fishermen, given the specificities of their employment conditions: parallel employment where incompatible with the work performed on board ships or fishing vessels, minimum predictability of work, the sending of workers to another Member State or to a third country, transition to another form of employment, and providing information on the identity of the social security institutions receiving the social contributions. For the purposes of this Directive, seafarers and sea fishermen as defined, respectively, in Council Directives 2009/13/EC¹ and 2017/159/EU² should be considered to be working in the Union when they work on board ships or fishing vessels registered in a Member State or flying the flag of a Member State.*

¹ *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).*

² *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 L 25, 31.1.2017, p. 12).*

- (11) In view of the increasing number of workers excluded from the scope of Directive 91/533/EEC on the basis of *exclusions* made by Member States under Article 1 of that Directive, it is necessary to replace those *exclusions* with a possibility for Member States not to apply the provisions of this Directive to an employment relationship with predetermined and actual working hours that amount to an average of *three* hours *per week* or less in a reference period of *four consecutive weeks*. *The calculation of those hours should include all time actually worked for an employer, such as overtime or work supplementary to that guaranteed or anticipated in the employment contract or employment relationship. From the moment when a worker crosses that threshold, the provisions of this Directive apply to him or her, regardless of the number of working hours that the worker works subsequently or the number of working hours provided for in the employment contract.*
- (12) *Workers who have no guaranteed working time, including those on zero-hour and some on-demand contracts, are in a particularly vulnerable situation. Therefore, the provisions of this Directive should apply to them regardless of the number of hours they actually work.*

- (13) 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 persons who are considered to be wholly or partly 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 those obligations are to be assigned to a natural or legal person who is not party to the employment relationship. ■
- (14) *Member States should be able to establish specific rules to exclude individuals acting as employers for domestic workers in the household from the requirements laid down in this Directive, with regard to the following matters: to consider and respond to requests for different types of employment, to provide mandatory training that is free of cost, and to provide for redress mechanisms that are based on favourable presumptions in the case of information that is missing from the documentation that is to be provided to the worker under this Directive.*

- (15) Directive 91/533/EEC introduced a ■ list of essential aspects *of the employment contract or employment relationship of* which workers are to be informed in writing. It is necessary to adapt that list, *which Member States can enlarge*, in order to take account of developments in the labour market, in particular the growth of non-standard forms of employment.
- (16) *Where the worker has no fixed or main place of work, he or she should receive information about arrangements, if any, for travel between the workplaces.*
- (17) *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, if any, to which the worker is entitled per year, and information about the employer's general training policy.*

- (18) *It should be possible for information on the procedure to be observed by the employer and the worker if their employment relationship is terminated to include the deadline for bringing an action contesting dismissal.*
- (19) Information on working time should be consistent with Directive 2003/88/EC of the European Parliament and of the Council¹, and ***should*** include information on breaks, daily and weekly rest periods and the amount of paid leave, ***thereby ensuring the protection of the safety and health of workers.***
- (20) Information on remuneration to be provided should include all elements of the remuneration indicated separately, including, ***if applicable***, contributions in cash or kind, ***overtime payments, bonuses and other entitlements***, 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.

¹ 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).

- (21) If it is not possible to indicate a fixed work schedule because of the nature of the employment, *such as in the case of an on-demand contract, employers should inform* workers how their *working time is to* be established, including the time slots in which they may be called to work and the minimum notice *period that they are to* receive *before the start of a work assignment*.
- (22) Information on social security systems should include *information on the identity of the social security institutions receiving the social security contributions*, where relevant, with regard to sickness, maternity ■ , paternity *and parental benefits, benefits for accidents at work and occupational diseases, and* old-age, invalidity, survivors', unemployment, pre-retirement *and* family benefits. *Employers should not be required to provide that information where the worker chooses the social security institution.* 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/EC¹ and Directive 2014/50/EU of the European Parliament and of the Council².

¹ 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).

² 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).

- (23) 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 ***as soon as possible and at the latest within a calendar week from their first working day. The remaining information should reach them within one month from their first working day. The first working day should be understood to be the actual start of performance of work by the worker in the employment relationship. Member States should aim to have the relevant information on the employment relationship provided by the employers before the end of the initially agreed duration of the contract.***
- (24) ***In light of the increasing use of digital communication tools, information that is to be provided in writing under this Directive can be provided by electronic means.***
- (25) In order to help employers to provide timely information, Member States should ***be able to provide*** templates at national level including relevant and sufficiently comprehensive information on the legal framework applicable. ***Those*** templates ***could*** be further developed at sectoral or local level, by national authorities and ***the*** social partners. ***The Commission will support Member States in developing templates and models and make them widely available, as appropriate.***

- (26) 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 the information for several assignments to* be collated before the first departure and subsequently modified in the case of any changes. Workers who qualify as posted workers under Directive 96/71/EC of the European Parliament and of the Council¹ should also be notified of the single official national website developed by the host Member State where they are able to 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 longer than four consecutive weeks.
- (27) Probationary periods allow *the parties to the employment relationship* to verify that *the* workers *and* the *positions* for which they *were* engaged *are compatible* while providing *workers* with accompanying support ■ . An entry into the labour market or a 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 a reasonable duration.

¹ 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).

- (28) A substantial number of Member States have established a general maximum duration of probation *of* between three and six months, which should be considered to be reasonable. *Exceptionally, it should be possible for probationary periods to last* longer than six months, where justified by the nature of the employment, such as for managerial *or executive* positions *or public service posts, or* where in the interests of the worker, such as in ■ the context of specific measures promoting permanent employment, in particular 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 because of sickness or leave, to enable the employer to assess the suitability of the worker for the task in question. In the case of fixed-term employment relationships of less than 12 months, Member States should ensure that the length of the probationary period is adequate and proportionate to the expected duration of the contract and the nature of the work. Where provided for in national law or practice, workers should be able to accrue employment rights during the probationary period.*

- (29) An employer should ***neither*** prohibit ***a worker*** from taking up employment with other employers, outside the work schedule established with that employer, ***nor subject a worker to adverse treatment for doing so. It should be possible for Member States to lay down conditions for the use of*** incompatibility ***restrictions, which are to be*** understood as ***restrictions*** on working for ***other*** employers ■ for objective reasons, such as for the protection of ***the health and safety of workers including by limiting working time, the protection of business confidentiality, the integrity of the public service*** or the avoidance of conflicts of interests.
- (30) Workers whose work ***pattern*** is ***entirely or mostly unpredictable*** should benefit from a minimum ***level of*** predictability ■ where the work ***schedule*** is determined mainly by the employer, be it directly, such as by allocating work assignments, or indirectly, such as by requiring the worker to respond to clients' requests.
- (31) Reference hours and days, ***which are to be*** understood ***as*** time slots ***during which*** work can take place at the request of the employer, should be established in writing at the start of the employment relationship.

- (32) A reasonable minimum notice *period, which is to be* understood *as* the period of time between the moment when a worker is informed *of* a new work assignment and the moment when the assignment starts, constitutes another necessary element of predictability of work for employment relationships with work *patterns* which are *entirely or mostly unpredictable. The* length of the notice period may vary according to the needs of *the sector concerned*, while ensuring *the* adequate protection of workers. *The minimum notice period* applies without prejudice to Directive 2002/15/EC of the European Parliament and of the Council¹.
- (33) Workers should have the possibility to refuse a work assignment if it falls outside of the reference hours and days or *if they were* not notified *of the work assignment in accordance with* the minimum notice *period*, without suffering adverse consequences for this refusal. Workers should also have the possibility to accept the work assignment if they so wish.

¹ 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).

- (34) *Where a worker whose work pattern is entirely or mostly unpredictable has agreed with his or her employer to undertake a specific work assignment, the worker should be able to plan accordingly. The worker should be protected against loss of income resulting from the late cancellation of an agreed work assignment by means of adequate compensation.*
- (35) *On-demand or similar employment contracts, including zero-hour contracts, under which the employer has the flexibility of calling the worker to work as and when needed, are particularly unpredictable for the worker. Member States that allow such contracts should ensure that effective measures to prevent their abuse are in place. Such measures could take the form of limitations to the use and duration of such contracts, of a rebuttable presumption of the existence of an employment contract or employment relationship with a guaranteed amount of paid hours based on hours worked in a preceding reference period, or of other equivalent measures that ensure the effective prevention of abusive practices.*

- (36) Where employers have the possibility to offer full-time or open-ended employment contracts to workers in non-standard forms of employment, a transition to more secure forms of employment should be promoted ***in accordance with the principles established in the European Pillar of Social Rights***. Workers should be able to request another more predictable and secure form of employment, where available, and receive a ***reasoned*** 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 to be available on the simple request of the worker, and so fall outside the scope of the right to request a form of employment with more predictable and secure working conditions.***

- (37) Where employers are required by *Union or national law* 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 *to all workers*, including to those in non-standard forms of employment. The costs of such training should not be charged to the worker *or* withheld or deducted from the worker's remuneration. *Such training should count as working time and, where possible, should be carried out during working hours. That 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 law or collective agreement to provide it to the worker. Member States should take the necessary measures to protect workers from abusive practices regarding training.*
- (38) *The autonomy of the social partners and their capacity as representatives of workers and employers should be respected. It should therefore be possible for the 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 out in this Directive. Member States should therefore be able to allow the social partners to maintain, negotiate, conclude and enforce collective agreements which differ from certain provisions contained in this Directive, provided that the overall level of protection of workers is not lowered.*

- (39) The **public** 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 ***penalties***, 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, or of ***a*** procedure under which the employer may be required to provide the missing information and ***may be*** subject to a penalty if ***the employer*** does not ***do so, or both***. It should be possible for ***such favourable presumptions to 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 relevant 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 authority or body*** that information is missing and ■ to supply complete and correct information ***in a timely manner***.

- (40) An extensive system of enforcement provisions for the social *acquis* in the Union has been adopted since Directive 91/533/EEC, in particular in the fields of *equal treatment*, 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, *which may include* adequate compensation, reflecting the Principle No 7 of the European Pillar of Social Rights.
- (41) 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.
- (42) 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.

- (43) 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 **or bodies** should be able to require the employer to provide duly substantiated grounds for the dismissal or equivalent measure.
- (44) The burden of ***proof with regard to establishing*** 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 **or body**, 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 that rule in proceedings, in which it would be for a court or other competent authority or body to investigate the facts, in particular in systems where dismissal has to be approved beforehand by such authority or body.***

- (45) Member States should provide for effective, proportionate and dissuasive penalties for breaches of the obligations under this Directive. ***Penalties can include administrative and financial penalties, such as fines or the payment of compensation, as well as other types of penalties.***
- (46) Since the objective of this Directive, ***namely to improve working conditions by promoting more transparent and predictable employment while ensuring labour market adaptability***, 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 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 that objective.
- (47) 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 Union or national law 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-hour contracts or similar types of employment contracts.***

- (48) 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 **micro**, 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 ensure 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.
- (49) The Member States may entrust **the** social partners with the implementation of this Directive, where **the** social partners jointly request to do so and **provided that** the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive. **They should also, in accordance with national law and practice, take adequate measures to ensure the effective involvement of the social partners and to promote and enhance social dialogue with a view to implementing the provisions of this Directive.**
- (50) **Member States should take any adequate measure to ensure fulfilment of the obligations arising from this Directive, for example by carrying out inspections, as appropriate.**

- (51) In view of the substantial changes introduced by this Directive with regard to the purpose, scope and content of Directive 91/533/EEC, it is not appropriate to amend that directive. Directive 91/533/EEC should therefore be repealed.
- (52) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹, 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:

¹ OJ C 369, 17.12.2011, p. 14.

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 ***transparent*** and predictable employment while ensuring labour market adaptability.
2. This Directive lays down minimum rights that apply to every worker in the Union ***who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State with consideration to the case-law of the Court of Justice.***
3. Member States may decide not to apply the obligations in this Directive to workers who have an employment relationship ***in which their predetermined and actual working time is*** equal to or less than ***an average of three*** hours ***per week*** in a reference period of ***four consecutive weeks***. Time worked with all employers forming or belonging to the same enterprise, group or entity shall count towards that ***three-hour average***.

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 *those* obligations *are to* 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*¹.

6. *Member States may provide, on objective grounds, that the provisions laid down in Chapter III are not to apply to civil servants, public emergency services, the armed forces, police authorities, judges, prosecutors, investigators or other law enforcement services.*

¹ *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).*

7. Member States may decide not to apply the obligations set out in Articles 12 and 13 and in point (a) of Article 15(1) to natural persons *in households acting as employers* where work is performed for *those households*.
8. Chapter II of this Directive applies to seafarers and sea fishermen without prejudice to Directives 2009/13/EC and Directive (EU) 2017/159, respectively. *The obligations set out in points (m) and (o) of Article 4(2), and Articles 7, 9, 10 and 12 shall not apply to seafarers or seafishermen.*

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

- (a) 'work schedule' means the schedule determining *the* hours and days on which performance of work starts and ends;
- (b) 'reference hours and days' means time slots in specified days during which work can take place at the request of the employer;
- (c) *'work pattern' means the form of organisation of the working time and its distribution according to a certain pattern determined by the employer.*

Article 3

Provision of information

The employer shall provide each worker with the information required pursuant to this Directive in writing. The information shall be provided and transmitted on paper or, provided that the information is accessible to the worker, that it can be stored and printed, and that the employer retains proof of transmission or receipt, in electronic form.

Chapter II

Information about the employment relationship

Article 4

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 *at least the following*:
- (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) either:
 - (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 fixed-term employment relationship, the end date or the expected duration thereof;
- (f) *in the case of temporary agency workers, the identity of the user undertakings, when and as soon as known;*
- (g) the duration and conditions of the probationary period, if any;
- (h) *the* training entitlement provided by the employer, *if any*;
- (i) 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;
- (j) the procedure to be observed by the employer and the worker, including *the formal requirements and* the notice *periods, where* their employment relationship *is* terminated or, where the length of the ■ notice *periods* cannot be indicated when the information is given, the method for determining such *notice periods*;

- (k) *the remuneration, including the* initial basic amount, any other component elements, *if applicable, indicated separately*, and the frequency and method of payment of the remuneration to which the worker is entitled;
- (l) 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 *and, where applicable, any arrangements for shift changes*;
- (m) if the work *pattern* is entirely or mostly *unpredictable*, ■ the employer *shall inform the worker of*:
 - (i) *the principle that the work schedule is variable, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours*;
 - (ii) the reference hours and days within which the worker may be required to work;
 - (iii) the minimum notice *period to which* the worker *is entitled* before the start of a work assignment *and, where applicable, the deadline for cancellation referred to in Article 10(3)*;

- (n) any collective agreements governing the worker's conditions of work ***or*** in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of such bodies or institutions within which the agreements were concluded;
- (o) ***where it is the responsibility of the employer, the identity of*** the social security institutions 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(g) to (l) and (o) 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 points.

Article 5

Timing and means of information

1. *Where not previously provided*, the information referred to in points (a), (b), (c), (d), (e), (g), (k), (l) and (m) of Article 4(2) shall be provided individually to the worker in the form of *one or more documents during a period starting on the first working day and ending no later than the seventh calendar day. The other information referred to in Article 4(2) shall be provided individually to the worker in the form of a document within one month of the first working day.*
2. Member States *may* develop templates and models for the *documents* referred *to* in paragraph 1 and put them at the disposal of worker and *employer* including by making them available on a single official national website *or* 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 **■** .

Article 6

Modification of the employment relationship

1. Member States shall ensure that any change in the aspects of the employment relationship referred to in Article 4(2) and any change to the additional information for workers **■** sent *to another Member State or to a third country referred to* in Article 7 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 on which it takes effect.
2. *The 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 5(1), and, where relevant, in Article 7.*

Article 7

Additional information for workers ■ sent *to another Member State or to 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 employer shall provide the documents* referred to in Article 5(1) ■ before *the worker's* departure and *the documents* shall include at least the following additional information:
 - (a) the country or countries in which the work abroad is to be performed and its *anticipated* duration;
 - (b) the currency to be used for the payment of remuneration;
 - (c) where applicable, the benefits in cash or kind relating to the work assignments ■ ;
 - (d) *information as to whether repatriation is provided for, and if so*, 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;
 - (b) *where applicable, any allowances specific to posting and any arrangements for reimbursing expenditure on travel, board and lodging;*
 - (c) the link to the single official national website developed by the host Member State pursuant to Article 5(2) of Directive 2014/67/EU *of the European Parliament and of the Council*¹.
3. The information referred to in point (b) of *paragraph* 1 and point (a) of paragraph 2 may, where appropriate, be given in the form of a reference to *specific provisions of* laws, regulations and administrative or statutory *acts* or collective agreements governing that information.
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.

¹ *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).*

Chapter III

Minimum requirements relating to working conditions

Article 8

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 law or practice*, that period shall not exceed six months ■ .
2. *In the case of fixed-term employment relationships, Member States shall ensure that the length of such a probationary period is proportionate to the expected duration of the contract and the nature of the work. In the case of the renewal of a contract for the same function and tasks, the employment relationship shall not be subject to a new probationary period.*
3. Member States may, *on an exceptional basis*, provide for longer probationary periods where justified by the nature of the employment or in the interest of the worker. *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.*

Article 9

Parallel employment

1. Member States shall ensure that an employer neither *prohibits a worker* from taking up employment with other employers, outside the work schedule established with that employer, *nor subjects a worker to adverse treatment for doing so*.
2. *Member States* may ■ lay down conditions *for the use of* incompatibility ■ restrictions *by employers, on the basis of objective grounds*, such as *health and safety*, the protection of business *confidentiality, the integrity of the public service* or the avoidance of conflicts of interests.

Article 10

Minimum predictability of work

1. Member States shall ensure that where a worker's work *pattern* is entirely or mostly *unpredictable* the worker *shall not* be required to work by the employer *unless both of the following conditions are fulfilled*:
 - (a) *the* work takes place within predetermined reference hours and days *as referred to* in point (m)(ii) of Article 4(2); *and*
 - (b) **■** the worker is informed by *his or her* employer of a work assignment *within* a reasonable notice period *established* in accordance with *national law, collective agreements or practice as referred to in point (m)(iii) of Article 4(2)*.
2. *Where one or both of the requirements laid down in paragraph 1 is not fulfilled, a worker shall have the right to refuse a work assignment without adverse consequences.*

3. *Where Member States allow an employer to cancel a work assignment without compensation, Member States shall take the measures necessary, in accordance with national law, collective agreements or practice, to ensure that the worker is entitled to compensation if the employer cancels, after a specified reasonable deadline, the work assignment previously agreed with the worker.*
4. *Member States may lay down modalities for the application of this Article, in accordance with national law, collective agreements or practice.*

Article 11

Complementary measures for on-demand contracts

Where Member States allow for the use of on-demand or similar employment contracts, they shall take one or more of the following measures to prevent abusive practices:

- (a) limitations to the use and duration of on-demand or similar employment contracts;*
- (b) a rebuttable presumption of the existence of an employment contract with a minimum amount of paid hours based on the average hours worked during a given period;*
- (c) other equivalent measures that ensure effective prevention of abusive practices.*

Member States shall inform the Commission of such measures.

Article 12

Transition to another form of employment

1. Member States shall ensure that ***a worker*** with at least six months' ***service*** with the same employer, who has completed his or her probationary period, if any, may request a form of employment with more predictable and secure working conditions where available ***and receive a reasoned written reply. Member States may limit the frequency of requests triggering the obligation under this Article.***
2. ***Member States shall ensure that*** the employer ***provides the reasoned*** written reply referred to in paragraph 1 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 13

Mandatory training

Member States shall ensure that where *an employer is* required by Union or national *law* or ■ by 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 to the worker free of cost, *shall count as working time and, where possible, shall take place during working hours.*



Article 14

Collective agreements

Member States may allow the 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 8 to 13.

Chapter V

Horizontal provisions



Article 15

Legal presumptions 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 5(1) *or* Article 6, one or both of the following shall apply:

 - (a) the worker shall benefit from favourable presumptions defined by the Member State, *which employers* shall have the possibility to rebut;
 - (b) the worker shall have the possibility to submit a complaint to a competent authority *or body and to receive adequate redress* in a timely *and effective* manner. ■
- 2.** *Member States may provide that the application of the presumptions and mechanism 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 16

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 the case of infringements of their rights arising from this Directive.

Article 17

Protection against adverse treatment or consequences

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

Article 18

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 have 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 the equivalent measures. 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 *or body*, facts from which it may be presumed that there has been such a dismissal or equivalent measures, it shall be for the employer 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 *workers*.
5. Member States *shall not be required to* apply paragraph 3 to proceedings in which it is for the court or *other* competent *authority or* body to investigate the facts of the case.
6. Paragraph 3 shall not apply to criminal *proceedings*, unless otherwise provided by the Member State.

Article 19

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. ■ The penalties provided for shall be effective, proportionate and dissuasive.

Chapter VI

Final provisions

Article 20

Non-regression and 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 21

Transposition and implementation

1. Member States shall ***take the necessary measures*** to comply with this Directive by ... [three years after the date of entry into force of this Directive] ■ . 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.
3. ***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.***
4. ***Member States shall, in accordance with their national law and practice, take adequate measures to ensure the effective involvement of the social partners and to promote and enhance social dialogue with a view to implementing this Directive.***
5. ***Member States may entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so and provided that Member States take all necessary steps to ensure that they can at all times guarantee the results sought under this Directive.***

Article 22

Transitional arrangements

The rights and obligations set out in this Directive shall apply to ***all*** employment relationships ***by*** ... [three years after the date of entry into force of this Directive]. However, ***an employer*** shall provide or complement the documents referred to in Article 5(1), Article 6 and Article 7 only upon ***the*** request of a worker ***who is already employed on that date***. The absence of such a request shall not have the effect of excluding a worker from the minimum rights established in ***Articles 8 to 13***.

Article 23

Review by the Commission

By ... [eight years after the date of entry into force of this Directive], the Commission shall, ***after consulting*** the Member States and ***the*** social partners at Union level and taking into account the impact on ***micro***, small and medium-sized enterprises, review the ***implementation*** of this Directive ***and propose***, where appropriate, ***legislative*** amendments.

Article 24

Repeal

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

Article 25

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 26

Addressees

This Directive is addressed to the Member States.

Done at █ ,

For the European Parliament

For the Council

The President

The President

Commission statement

In accordance with Article 23 of the Directive, the Commission will review the application of this Directive by entry into force plus 8 years, with a view to propose, where appropriate, the necessary amendments. The Commission undertakes in its report to pay particular attention to the application of Articles 1 and 14 by the Member States. The Commission will also verify compliance with Article 14 when assessing whether Member States have fully and correctly transposed the Directive into their national legal systems.
