



Council of the
European Union

Brussels, 22 December 2017
(OR. en)

16018/17

**Interinstitutional File:
2017/0355 (COD)**

**SOC 829
EMPL 629
DIGIT 290
CODEC 2147**

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	21 December 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	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

Delegations will find attached document COM(2017) 797 final.

Encl.: COM(2017) 797 final



Brussels, 21.12.2017
COM(2017) 797 final

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

{SWD(2017) 478 final} - {SWD(2017) 479 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The world of work has evolved significantly since the adoption of Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship ("Written Statement Directive"). The last 25 years have brought about a growing flexibilisation of the labour market. In 2016 a quarter of all employment contracts were for "non-standard" forms of employment and in the last ten years more than half of all new jobs were "non-standard".¹ Digitalisation has facilitated the creation of new forms of employment whereas demographic changes have resulted in a greater diversity of the working population. The flexibility coming with new forms of employment has been a major driver of job creation and labour market growth. Since 2014, more than five million jobs have been created, of which almost 20% in new forms of employment. The adaptability of new forms of employment to changes in the economic context has enabled new business models to develop, including in the collaborative economy, and has offered entry into the labour market to people who previously would have been excluded. The employment level in the EU is an all-time high, with 236 million men and women employed.

However, these trends have also led to instability and an increased lack of predictability in some working relationships, especially for workers in the most precarious situations. Inadequate legal frameworks can subject workers in non-standard employment to unclear or unfair practices and make it difficult to enforce their rights. Between 4 and 6 million workers are on on-demand and intermittent contracts, many with little indication when and for how long they will work. Up to 1 million are subject to exclusivity clauses, preventing them from working for another employer.² Only a quarter of temporary workers transition to a permanent post, and the rate of involuntary part-time had reached some 28% by 2016.³ More flexible work arrangements can create uncertainty as to applicable rights.⁴

In response some Member States have put in place new regulations and national social partners have developed new collective agreements, leading to an increasingly diverse regulatory system across the EU. This increases the risk of competition based on undercutting social standards, which has harmful consequences also for employers, who are subject to unsustainable competitive pressure, and for Member States, who forego tax revenue and social security contributions. The challenge is to ensure that dynamic innovative labour markets underpinning EU's competitiveness are framed in a way that offers basic protection to all workers, longer-term productivity gains for employers and allows for convergence towards better living and working conditions across the EU.

This initiative is one of Commission's key actions to follow up on the European Pillar of Social Rights, jointly proclaimed by the European Parliament, the Council and the Commission at the Social Summit for Fair Jobs and Growth in Gothenburg on 17 November

¹ Non-standard work includes permanent part-time and temporary full-time and part-time.

² "Study to support Impact Assessment on the Review of the Written Statement Directive" by Centre for Strategy and Evaluation Services and Public Policy and Management Institute.

³ EU Labour Force Survey (EU-28, 2016).

⁴ Commission Communication *A European Agenda for the Collaborative Economy* COM(2016)356 final.

2017.⁵ The Pillar serves as a compass for the renewed upwards convergence in social standards in the context of the changing realities of the world of work. This Directive contributes mainly to the Pillar's Principle 5 on "Secure and adaptable employment" and Principle 7 on "Information about employment conditions and protection in case of dismissals".⁶ The initiative was announced in the Letter of Intent of President Juncker and First Vice-President Timmermans of 13 September 2017 and is part of the Commission's Work Programme.

The proposal addresses two interlinked challenges. Firstly, the evaluation of Directive 91/533/EEC conducted under the Commission's Regulatory Fitness and Performance Programme (REFIT)⁷ identified weaknesses in the personal and material scope of the Directive and indicated how its effectiveness could be improved. Secondly, the public consultation on the European Pillar of Social Rights⁸ highlighted gaps between the current EU social acquis and recent developments on the labour market. This was also emphasised in the European Parliament's Resolution of January 2017 on the Pillar. The Parliament called to extend existing minimum standards to new kinds of employment relationships, improve enforcement of EU law, increase legal certainty across the single market, and prevent discrimination by complementing existing EU law to ensure for every worker a core set of enforceable rights, regardless of the type of contract or employment relationship.⁹ The Resolution of the European Parliament on working conditions and precarious employment of July 2017 calls on the Commission to revise the Written Statement Directive to take account of new forms of employment.¹⁰ The European Economic and Social Committee and the Committee of the Regions in their Opinions on the Pillar highlighted gaps in protection for workers and the need to act at EU level to set a framework for fair working conditions and to strike a balance between flexibility and security.¹¹

On 26 April 2017 and 21 September 2017, respectively, the Commission launched two phases of the consultation of the European social partners on the possible direction and on the contents of Union action as provided for under Article 154 of the Treaty on the Functioning of the European Union (TFEU).¹² The social partners did not initiate the process of dialogue with the aim of establishing contractual relations, including agreements, on the topic as provided for in Article 155 TFEU. Building on the views expressed in the social partners' consultation, the Commission is bringing forward this proposal for a Directive in accordance with the provisions of the TFEU.

The **general objective** of the proposed Directive is to promote more secure and predictable employment while ensuring labour market adaptability and improving living and working conditions.

⁵ <http://data.consilium.europa.eu/doc/document/ST-13129-2017-INIT/en/pdf>

⁶ Principle 7 "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 on probation period..."

⁷ *REFIT Evaluation of the 'Written Statement Directive' (Directive 91/533/EEC)*, SWD(2017)205 final.

⁸ *Report of the public consultation, accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Establishing a European Pillar of Social Rights*, SWD(2017)206 final.

⁹ European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights.

¹⁰ European Parliament resolution of 4 July 2017 on working conditions and precarious employment.

¹¹ Opinion SOC/542 of the European Economic and Social Committee of 25 January 2017. Committee of the Regions, Opinion on the European Pillar of Social Rights, 11 October 2017.

¹² C(2017)2611 final and C(2017)6121 final.

The **specific objectives** through which the general objective would be addressed are:

- (1) to improve workers' access to information concerning their working conditions;
- (2) to improve working conditions for all workers, notably those in new and non-standard employment, while preserving scope for adaptability and for labour market innovation;
- (3) to improve compliance with working conditions standards through enhanced enforcement; and
- (4) to improve transparency on the labour market while avoiding the imposition of excessive burdens on undertakings of all sizes.

The proposed Directive will replace the Written Statement Directive with a new instrument that ensures transparency about working conditions for all workers and defines new substantive rights to improve predictability and security of working conditions, particularly for those in precarious employment. It does so through the provision in Chapter II of updated essential information about the employment relationship to all workers in the Union, including the estimated 2-3 million currently excluded from the scope of the Written Statement Directive, which leaves the notion of "employee" and "employment relationship" to be defined by Member States' law. The personal scope of the Directive will be clarified by defining a notion of "worker" based on established case-law of the Court of Justice of the European Union (CJEU) for determining worker status, and extended by reducing the possibilities for Member States to exclude workers in short or casual employment relationships. A new set of minimum requirements in Chapter III establishes a limit to the duration of any probationary period, a general rule that a worker cannot be prevented from taking up work with another employer outside the work schedule, rights to greater predictability of working time and reasonable advance notice for those on variable work schedules, a possibility to request a transition to a more predictable and secure form of employment, and a right to mandatory training without cost. The rights are underpinned by provisions that address weaknesses in the enforcement of Directive 91/533/EEC and adapt enforcement measures from other elements of the EU social acquis which address comparable situations.¹³

Rather than addressing a particular type of employment, as is done in the Directives on part-time or fixed-term or temporary agency work,¹⁴ the proposed Directive will ensure a basic level of universal protection across existing and future contractual forms. Such a Directive will be a more effective instrument than separate legislative initiatives targeted at specific forms of employment that may easily become superseded by the rapid pace of changes on the labour market. The proposed Directive should set the legal framework for a future positive development of new adaptable forms of employment.

This proposal is expected to offer a range of benefits. All workers, including those in short-term and casual employment relationships, will benefit from clarity about their working conditions and new minimum standards. While possibly losing some flexibility at the margin, employers are expected to benefit from more sustainable competition with greater legal

¹³ Directive 2006/54/EC (on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)), Directive 2000/43/EC (implementing the principle of equal treatment between persons irrespective of racial or ethnic origin), and Directive 2000/78/EC (establishing a general framework for equal treatment in employment and occupation).

¹⁴ Council Directive 97/81/EC (Part-Time Work), Council Directive 1999/70/EC (Fixed-Term Work), Directive 2008/104/EC (Temporary Agency Work).

certainty and from a more motivated and productive workforce, with increased contractual stability and retention. Society at large would benefit from a wider base for taxation and social security contributions.

- **Consistency with existing provisions in the policy area**

The proposed Directive complements the following acts of EU secondary legislation :

Directive 96/71/EC on the posting of workers in the framework of the provision of services

Article 6 of the proposed Directive specifies the written information that must be provided to workers being sent abroad, including those being posted to another EU Member State, drawing on the relevant provisions of Directive 96/71/EC, as recommended in the REFIT evaluation.

Council Directive 97/81/EC on part-time work and Council Directive 1999/70/EC on fixed-term work

Article 10 of the proposed Directive complements provisions of those two directives aimed specifically at part-time workers and fixed-term workers, establishing the possibility for a worker to request a form of employment with more predictable and secure working conditions, where available, and to receive a written response from the employer.

Directive 2008/104/EC on temporary agency work

The REFIT evaluation found that the Written Statement Directive could take better account of Directive 2008/104/EC by explicitly covering agency workers and specifying that the user undertaking has the obligation to inform the agency worker directly on the conditions of employment. This is reflected in Article 2 of the proposed Directive, which sets out criteria for defining worker and employer status and in Article 1 which specifies that the functions of employer may be fulfilled by more than one entity.

In addition, the provisions in Chapter III of the proposed Directive support the achievement of an organisation of working time protective of safety and health of workers, addressed by Directive 2003/88/EC concerning certain aspects of working time.

As regards trainees, the Commission notes that they are already subject to protection under the Council Recommendation of 10 March 2014 on a Quality Framework on traineeships. The Commission has proposed a similar framework for apprentices.¹⁵

The enforcement provisions contained in Articles 13 to 18 of the proposed Directive are derived from, and complement, provisions in the existing EU social acquis as detailed in the section describing the articles of the proposed Directive.

- **Consistency with other Union policies**

The proposed Directive contributes to implementing the following Principles set out in the European Pillar of Social Rights:

Principle 1: *Education, training and lifelong learning*. The information requirements in Article 3 are extended to cover training provided by the employer and Article 11 requires the

¹⁵ COM(2017)563 final.

Member States to ensure that employers provide cost-free mandatory training to their workers, as required in relevant Union or national legislation or collective agreements.

Principle 2: *Gender equality*. The workforce engaged in new and non-standard forms of employment, who would particularly benefit from the material rights created in Chapters III to VI of the proposed Directive, is predominantly female.¹⁶ The Directive will therefore contribute to the Principle of improving equality of treatment and opportunities regarding participation in the labour market.

Principle 5: *Secure and adaptable employment*. The extension of scope of the proposed Directive set out in Articles 1 and 2 addresses the Principle that workers have a right to fair and equal treatment regarding working conditions, access to social protection and training "regardless of the type and duration of the employment relationship". The overall content of the proposed Directive is intended to strike a balance between enhancing rights for workers and maintaining the "necessary flexibility for employers to adapt swiftly to changes in the economic context" referred to in Principle 5(b), including by allowing the possibility for modifications to the minimum requirements on working conditions by means of collective agreements (Article 12). The proposed Directive also addresses Principle 5(d): "Employment relationships that lead to precarious working conditions shall be prevented, including by prohibiting abuse of atypical contracts. Any probation period should be of reasonable duration." The new material rights to increased predictability, to request a new form of employment, as well as the limitations on the use of exclusivity clauses and incompatibility clauses address the first part. Setting a six-month limit for probationary periods addresses the second.

Principle 7: *Information about employment conditions and protection in case of dismissals*. The proposed Directive reinforces the current obligation to provide written information, by extending and updating the scope of the information to be provided as a minimum, and by reducing the deadline for its provision from 2 months to the first day of the employment relationship, so addressing the element of Principle 7(a) that the information must be provided "at the start of employment."

Principle 8: *Social dialogue and involvement of workers*. Social partners were consulted under Article 154 TFEU on the possible scope of Union action to revise the Written Statement Directive, and their responses were taken into account in the development of the Commission's proposal. Article 12 of the proposed Directive provides flexibility for the minimum requirements set out in Chapter III to be varied by collective agreement, as long as the result respects the overall protection afforded by the proposed Directive.

Other initiatives contributing to the implementation of the European Pillar of Social Rights are closely related to and complementary to this proposed Directive, notably the legislative proposal on work-life balance of parents and carers (COM(2017)253 final), a social partners' consultation on access to social protection for workers and the self-employed (C(2017)2610 final and C(2017)7773 final), and an interpretative communication on working time (C(2017)2601 final). The proposal for a Directive on work-life balance for parents and carers introduces a right for workers with children up to at least 12 years old, to request flexible working arrangements for caring purposes; employers then have a duty to consider and respond to requests for flexible working arrangements, taking into account the needs of both

¹⁶ EU Labour Force Survey (EU-28, 2016).

employers and workers, and to justify any refusal of such a request. Employers would also have the obligation to consider and respond to requests to return to the original working pattern. The proposed Directive on transparent and predictable working conditions would complement this by creating a possibility for workers to request a more secure, rather than a more flexible, form of work.

Finally, account has been taken of the proposal on the revision of the posting of workers Directive (COM(2016)128 final) and of the proposals made under the transport "mobility package" of 31 May 2017, in particular the proposed specific rules concerning the posting of drivers in the road transport sector (COM(2017)278 final).

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal is based on Article 153(2)(b) TFEU, which provides for the adoption of directives setting minimum requirements with respect to, *inter alia*, "working conditions" as set out in Article 153(1)(b) TFEU, while avoiding imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

• Subsidiarity

Information obligations relating to working conditions have been established at EU level by Directive 91/533/EEC. The REFIT evaluation of that Directive has confirmed that EU-level action in this area remains necessary, in line with the principle of subsidiarity. Amendments are necessary to bring that Directive into line with developments on the labour market since its adoption in 1991, and to address the shortcomings identified in the REFIT evaluation.

The additional material rights created in Chapter III are justified at EU level insofar as action solely by Member States in response to new and non-standard forms of employment would not necessarily have the same level of protection in terms of transparency and predictability and would risk increasing divergences between Member States with potential competition on the basis of social standards. Business would therefore continue to compete on an uneven playing field, which would hamper the operation of the internal market.

The proposed Directive is based on a minimal degree of harmonisation of Member State systems which respects Member States' competences to set higher standards and provides the possibility for social partners to vary the mix of material rights and obligations by collective agreement. In line with Article 153(2)(b) TFEU, it will support and complement the activities of the Member States through minimum requirements for gradual implementation.

• Proportionality

The proportionality principle is fully respected as the scope of the proposal is limited to ensuring the provision of consistent information to workers about their working conditions, and to ensuring basic rights for workers, the absence of which could create a race to the bottom in social standards. The proposed Directive includes measures for mitigating burdens and supporting compliance. As indicated in the Impact Assessment, the costs are reasonable and justified in light of the accrued and longer-term benefits in terms of more secure employment, increased productivity and simplified procedures for both workers and employers, matching the wider social ambitions of the EU.

The proposal leaves the Member States the option of keeping or setting more favourable standards for workers and taking into account features specific to their national situations, and allows for modifications in the composition of the material rights by means of collective agreements. As a consequence, it leaves room for flexibility as regards the choice of actual implementing measures.

- **Choice of the instrument**

Article 153(2)(b) in combination with 153(1)(b) TFEU foresees explicitly that Directives are the legal instrument to be used for establishing minimum requirements concerning working conditions to be gradually implemented by Member States.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

A REFIT evaluation of the Written Statement Directive was published in April 2017.¹⁷ It concluded that the Directive is considered **relevant** by all stakeholders and that **compliance** with the Directive in Member States and across sectors is medium to high. The Directive has been to a significant extent **effective** in reaching its objectives. Its effectiveness could be further enhanced through a revision of its scope to ensure a broader coverage of workers, including those in new forms of employment, shortening the two-month deadline for providing information to workers and improving enforcement by revising the means of redress and sanctions in cases of non-compliance. Regarding **efficiency**, the transposition of the Directive does not appear to have significantly increased costs for companies. On external **coherence**, there is scope for further convergence with the rules covering posted workers, temporary agency workers and trainees.

The evaluation further confirmed that the Directive brings clear **EU added value**. Having minimum standards at EU level on information to employees is essential as it increases certainty for both employers and employees and prevents a detrimental race to the bottom between Member States in terms of working conditions. It also increases predictability for businesses and facilitates the mobility of workers within the internal market.

- **Stakeholder consultations**

Between 26 January and 20 April 2016, the Commission carried out a public consultation on the Written Statement Directive. A summary of these responses is annexed to the REFIT evaluation.

An open public consultation on the Commission's proposal for a European Pillar of Social Rights ran from March to December 2016. As this public consultation clearly revealed,¹⁸ there is a growing need to define and apply appropriate rights for many workers in new and non-standard forms of employment relationships. Such contractual arrangements are creating opportunities for people to enter or remain in the labour market and the flexibility they offer can be a matter of personal choice. However, inadequate regulation means that many people

¹⁷ SWD(2017)205 final.

¹⁸ See launching Communication COM(2016)127 final and Report of the public consultation SWD(2017)206 final, pages 18-21.

in work are stuck in legal loopholes, which may make them subject to unclear or unfair practices and make it difficult to enforce their rights.

Pursuant to Article 154 TFEU, the Commission undertook a two-phase consultation with the **social partners** on a possible revision of the Written Statement Directive.

The views of the social partners were mixed on the need for legislative action to revise Directive 91/533/EEC and there was no agreement among social partners to enter into direct negotiations to conclude an agreement at Union level.

In both phases **trade unions** were in favour of clarifying and broadening the personal scope of the Directive, in particular through removing exclusions from personal scope and including criteria to assist with identifying the existence of an employment relationship. In addition, they argued for the inclusion of self-employed in the scope of application. With regard to the information package, trade unions agreed with the list suggested in the Commission's consultation document and argued for further additions to the package. They called for written statements to be provided prior to the start of the work or immediately on signing the contract. The need to improve access to sanctions and means of redress was acknowledged, including by calling for the introduction of a presumption of employment in case the employer fails to provide a written statement. Finally, they were strongly in favour of new minimum rights aimed at improving transparency and predictability of working conditions. They however requested more rights than those presented in the second consultation document including a complete ban on forms of contractual arrangements not guaranteeing workers a minimum of paid hours and a right to adequate remuneration.

In both phases **employers' organisations** opposed the extension of the scope of application of the Directive and the insertion of a definition of worker, based on concerns related to flexibility for business and job creation potential as well as to subsidiarity. A majority did not support amending the information package nor reducing the 2 months' deadline. No organisation supported changes at EU level to the system of redress and sanctions. With very limited exceptions, employer organisations were opposed to the inclusion of new minimum rights in a revised Directive. For that reason, they preferred not to express views on specific minimum rights set out in the consultation document, arguing that such issues were a matter of national competence and that it was not necessary, or even contrary to the principle of subsidiarity, for the EU to act in these fields.

- **Collection and use of expertise**

The Commission awarded a contract for the analysis of the costs and benefits of possible EU measures contained in a revised Directive. It has also reviewed some principal sources of analysis and data concerning new and non-standard employment, notably those compiled by the European Parliament,¹⁹ the European Foundation for the Improvement of Living and Working Conditions (Eurofound),²⁰ the International Labour Organisation (ILO),²¹ and the Organisation for Economic Cooperation and Development (OECD).²²

¹⁹ European Parliament, Policy Department A, (2016) *Precarious Employment: Patterns, Trends and Policy Strategies in Europe*.

²⁰ Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg; Eurofound (2017), *Aspects of non-standard employment in Europe*, Eurofound, Dublin

²¹ *Non-standard employment around the world: Understanding challenges, shaping prospects* International Labour Office – Geneva: ILO. 2016.

²² OECD *Employment Outlook 2014*, "Non-regular employment, job security and labour market divide".

- **Impact assessment**

The Impact Assessment was discussed with the Regulatory Scrutiny Board (RSB) on 29 November 2017. The RSB issued a positive opinion with comments, which have been addressed by further clarifying the scope, the choice of options and expected benefits of this initiative and explaining how potential unintended consequences of the initiative could be mitigated.²³

The combination of measures put forward in this proposal was assessed in the Impact Assessment as the most effective, efficient and coherent. The quantitative analysis of the preferred combination of measures shows that a substantial improvement of working and living conditions is expected. Most notably, at least 2-3 million non-standard workers will enter into the scope of the Directive. Enhanced predictability for some 4-7 million workers should have a positive impact on work-life balance and health. Some 14 million workers might request a new form of work. Lack of exclusivity clauses will allow some 90,000-360,000 on-demand workers to seek additional work and earn 355-1,424 million EUR per year extra. Workers' right to receive cost-free mandatory training would be confirmed and they would have easier access to redress. Employers would benefit from more sustainable competition, increased legal certainty and an overall improvement in transparency in the labour markets. Non-quantified benefits for employers include higher retention and loyalty, improved worker relations, fewer complaints and court cases, better resource planning, contributing to an overall increase in productivity.

The expected costs of the preferred combination of options are for employers: the cost of issuing a new or revised written statement is expected to be 18-153 EUR for SMEs and 10-45 EUR for larger companies. Companies would also have one-off costs related to familiarisation with the new Directive: an average of 53 EUR for an SME and 39 EUR for a larger company. Costs of responding to requests for a new form of employment are expected to be similar to those deriving from issuing a new written statement. Employers anticipate also some modest indirect costs (legal advice, revised scheduling systems, HR management time, information for staff). Flexibility will only be lost at the margin (i.e. for the small proportion of employers making extensive use of the most flexible forms of employment). The preferred combination of options takes into account unintended effects and includes mitigating measures. No significant aggregate impacts on wages are expected, though reduced underemployment, lower incidence of exclusivity clauses and more predictable working conditions can be expected to allow increased individual earnings. No costs are expected to be incurred by workers.

The specific impacts per Member State would depend on a number of factors, including the extent of necessary legislative adjustments, the incidence of non-standard forms of employment, and the broader socioeconomic context. Overall, benefits can be expected in terms of a reduction in undeclared work as the proposed measures will facilitate inspection and enforcement. At EU level, the value of undeclared work brought into formal economy is estimated at 40-120 million EUR per year. Associated benefits could amount to 8-25 million EUR annually in increased tax revenues and 4-24 million EUR annually in reduced social security payments. There could also be an increase of some 46-185 million EUR per year in tax revenues as on-demand workers will be able to seek additional employment. Non-quantified benefits could include increased productivity, enhanced adaptability of the workforce, increased mobility both within the national labour markets and across the EU, and

²³ See Annex I of the Impact Assessment.

enhanced social cohesion. Enhanced access to redress could improve the consistency in the application of the legal framework. Some modest one-off transposition and ongoing implementation costs can be expected as legal frameworks of Member States will need to be adapted.

- **Regulatory fitness and simplification**

As this is a revision of an existing piece of legislation, the Commission has looked at opportunities to simplify and reduce burdens. The analysis shows that costs deriving from the Directive are modest and no evidence was presented that cheaper ways of fulfilling the same objectives with the same effectiveness were available. However, there is scope to clarify and increase the transparency and legal predictability of employment contracts. The clarification of the scope of the Directive will make the regulatory framework easier to understand and more predictable. Also, concrete simplification elements have been included in the Directive. Given the limited availability of data, the simplification elements have not been quantified, but are explained throughout the explanatory memorandum. Regarding the establishment of new obligations, a lighter regime for SMEs has been foreseen for a request to transition to another form of employment, and templates and models for written statements and to make information on national laws or provisions and relevant collective agreements available to employers in an accessible format are to be provided to reduce burdens on employers. Based on the Impact Assessment, such mitigation measures could decrease the cost of producing written statements by 30 to 40%.

- **Fundamental rights**

The objectives of this proposal are in line with the Charter of Fundamental Rights of the European Union, in particular Article 31 on fair and just working conditions, which provides that *‘Every worker has the right to working conditions which respect his or her health, safety and dignity’*.

4. BUDGETARY IMPLICATIONS

The proposal does not require additional resources from the European Union's budget.

5. OTHER ELEMENTS

- **Monitoring, evaluation and reporting arrangements**

Member States must transpose the Directive two years after the adoption and communicate to the Commission the national transposition measures via the MNE-Database. In line with Article 153(3) TFEU they may entrust the social partners with the transposition through collective agreements.

To assess the effectiveness with which this initiative achieves its general and specific objectives, the Commission has identified core progress indicators to monitor successful implementation.²⁴ These indicators will be regularly monitored by the Commission and serve as the basis for its evaluation of and reporting on the impact of the Directive eight years after its entry into force.

²⁴ The core indicators chosen are mainly derived from comparative data sources (Eurostat, OECD) but where indicators do not exist, information can be taken from national data. The detailed list of indicators can be found in the Impact Assessment.

- **Detailed explanation of the specific provisions of the proposal**

Chapter I – General provisions

Article 1 – Purpose, subject matter and scope

Paragraph 3 allows Member States not to apply the provisions of the Directive to an employment relationship of up to 8 hours per month. This derogation replaces the existing possibilities for exclusion from the personal scope in Article 1 of Directive 91/533/EEC (employment relationship not exceeding one month or a working week not exceeding 8 hours or of a casual and/or specific nature), which according to the REFIT evaluation were applied inconsistently and excluded increasing numbers of workers.²⁵ Paragraph 4 provides that, where the working hours are not determined in advance, for instance in on-demand employment, that derogation should not apply because the duration of the work is not known.

Under paragraph 5 the definition of employer in Article 2 is complemented by a clarification that the function of employer for the purpose of the proposed Directive may be fulfilled by more than one entity. For instance, in the case of a temporary agency worker, the information requirements in Article 3 may be fulfilled partly by the temporary work agency and partly by the user undertaking. In order to avoid placing disproportionate burdens on private households, Member States may disapply the rights to request a new form of work and to mandatory training without charge and the application of favourable presumptions in case of missing information with respect to natural persons employing domestic workers.

Directive 2009/13/EC implementing the Social Partner Agreement on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC and Directive (EU) 2017/159 implementing the Social Partners' Agreement on the Work in Fishing Convention contain specific provisions on seafarers' employment agreements and fishermen's work agreements. Therefore, paragraph 7 of Article 1 clarifies that Chapter II of the proposed Directive will apply without prejudice to these directives.

Article 2 – Definitions

This article lays down criteria for establishing worker status for the purpose of the proposed Directive. These criteria are based on the case law of the CJEU as developed since case C-66/85 *Lawrie-Blum*, as most recently recalled in C-216/15 *Ruhrlandklinik*. It is necessary to specify such criteria in view of the findings of the REFIT evaluation that the scope of application of the Written Statement Directive varies among Member States depending on their concepts of 'employee', 'employment relationship' and 'employment contract',²⁶ and risks excluding growing numbers of workers in non-standard forms of employment, such as domestic workers, on-demand workers, intermittent workers, voucher-based workers and platform workers. The proposed Directive would apply to such workers, as long as they fulfil the criteria set out above.²⁷

²⁵ SWD(2017)205 final, page 25.

²⁶ SWD(2017)205 final, pages 21, 25 and footnote 50.

²⁷ See also Communication from the Commission, *A European Agenda for the Collaborative Economy*, COM(2016)356 final, Section 2.4.

Chapter II - Information on the employment relationship

Article 3 – Obligation to provide information

This provision updates the minimum information requirements set out in Article 2 of the Written Statement Directive, taking into account results of the REFIT evaluation²⁸ and the inputs from Social Partners, by introducing new elements relating to:

- duration and conditions of probation (Article 3.2.f);
- training entitlement (Article 3.2.g);
- arrangements for overtime and its remuneration, in the light of the judgment of the CJEU in Case C-350/99 *Lange* that such information forms part of the 'essential aspects of the employment relationship' about which the worker should be informed in the written statement (Article 3.2.k);
- key information about the determination of variable working schedules, to take account of the increasing prevalence of such types of work organisation such as casual or zero-hours contracts or work in the collaborative economy (Article 3.2.l);
- information about the social security system(s) receiving contributions (Article 3.2.n).

In addition, the information requirements relating to the place of work (Article 3.2.b) have been modernised to allow for forms such as platform work, where the workplace is not determined by the employer, and the procedure for termination of employment (3.2.i) has been included.

Article 4 – Timing and means of information

Paragraph 1 replaces the current maximum timeframe of 2 months for provision of a written statement set out in Article 3 of Directive 91/533/EEC with the first day of the employment relationship, in line with Principle 7 of the European Pillar of Social Rights referred to above. It also sets out that the statement may be provided electronically.

In order to reduce burdens on employers, and in line with the recommendation in the REFIT evaluation,²⁹ paragraphs 2 and 3 require Member States to produce templates and models for the written statement and to make information on national laws or provisions and relevant collective agreements available to employers in an accessible format.

Article 5 – Modification of the employment relationship

This provision updates Article 5 'Modification of aspects of the contract or employment relationship' of Directive 91/533/EEC, to require that all modifications to the working conditions notified under Article 3 or to the information provided under Article 6 of the proposed Directive must be transmitted at the latest on the day they take effect, rather than up to two months afterwards as in the current Directive.

Article 6 – Additional information for workers posted or sent abroad

²⁸ SWD(2017)205 final, page 24.

²⁹ SWD(2017)205 final, page 29.

This provision updates Article 4 'Expatriate workers' of Directive 91/533/EEC, to align with the relevant provisions of Directives 96/71/EC on posted workers and the related enforcement Directive 2014/67/EU. In order to limit burdens on employers the obligations set out in this Article apply only if the duration of the work period abroad is more than four consecutive weeks, unless Member States specifically provide otherwise. Information provided before the first departure may cover several grouped work assignments and may be subsequently modified in case of change.

Chapter III – Minimum requirements relating to working conditions

Article 7 – Maximum duration of any probationary period

This provision sets a maximum duration of six months for any probationary period, unless a longer duration is justified by the nature of the employment, such as a managerial position, or where it is in the worker's interest, for instance an extension following long illness.

This provision reflects Principle 5(d) of the European Pillar of Social Rights: "5(d): Any probation period should be of reasonable duration."

Article 8 – Employment in parallel

This article provides that no worker may be prevented by his or her employer from taking up another employment (so-called exclusivity or incompatibility clauses), unless this is justified by legitimate reasons such as the protection of business secrets or avoidance of conflicts of interest.

Article 9 – Minimum predictability of work

This article provides that, if a worker has a variable work schedule where the employer, rather than the worker, determines the timing of the work assignments,

(a) the employer must notify such workers of the periods of hours and days within which they may be required to work. That would enable workers to use the time not covered by such reference hours/days in other employment, in education or to fulfil care obligations. Workers may agree to work outside the reference hours and days, but cannot be obliged to do so, and must not be subject to detriment if they refuse (see Article 16).

(b) workers cannot be required to work if they receive less than a reasonable advance notice from their employer, set out in advance in the written statement. They may agree to do so but must not be subject to detriment if they refuse (see Article 16). What is considered a reasonable advance notice may vary across sectors.

These provisions do not apply in cases where the employer sets a task to be achieved, but the worker is free to determine the time schedule within which he or she performs the task.

Article 10 – Transition to another form of employment

This article establishes that workers will be able to request a more secure and predictable form of work, where available e.g. workers wishing to transition to full-time working relationship, or a working relationship with a higher number of guaranteed paid hours or a less variable work schedule. Employers are required to respond in writing.

The deadline for the employer to respond will be three months for natural persons, micro, small or medium enterprises, and one month for larger enterprises, so as to reduce the burden for smaller enterprises that may not have the same access to dedicated human resource management services. Moreover, the response to subsequent requests from the same worker to an employer which is a natural person or a micro, small or medium enterprise, could take an oral form, if the justification for the reply remains unchanged.

This provision reflects Principle 5(a) of the European Pillar of Social Rights: "The transition towards open-ended forms of employment shall be fostered."

Article 11 – Training

This provision ensures that employers provide workers with any training to carry out their tasks that they are required to provide under Union or national legislation or collective agreements, without charging its cost to the workers.

Chapter IV – Collective agreements

Article 12 – Collective agreements

This provision permits modifications of the minimum standards set out in Articles 7 to 11 (i.e. the material rights but not the information package) by means of collective agreements concluded between the social partners under national law or practice. The overall degree of protection for workers must not be less than that provided for in Articles 7 to 11 taken together.

Chapter V – Horizontal provisions

Article 13 – Compliance

This provision, along with Articles 16 to 18, follows the same approach as adopted by the co-legislator in Directive 2006/54/EC, Directive 2000/43/EC, and Directive 2000/78/EC.

Article 13 requires Member States to ensure that the necessary amendments are made to individual or collective agreements, internal rules of undertakings and any other arrangements so as to align them to the provisions of the proposed Directive. This obligation does not concern modifications of the minimum standards set out in Articles 7 to 11 laid down in accordance with Article 12.

Article 14 - Legal presumption and early settlement mechanism

This article provides, on the basis of existing good practice among Member States, for two alternative avenues of redress for failure to provide all or some of the information set out in Article 3, either

- the use of favourable presumptions proportionate to the missing information, including at least a presumption of an open-ended relationship if no information is provided about the duration of the employment relationship, a presumption of a full-time position if no information is provided on the guaranteed paid hours, and a presumption of absence of probationary period where no information is provided on the existence or duration of a probationary period; or

- access to an administrative procedure under which a competent authority (which may be an existing body such as a labour inspectorate or a judicial body) has the authority to establish the facts of the case, to order the employer to issue the missing information, and to impose a fine if this is not done.

This provision addresses weaknesses in the existing mechanisms identified in the REFIT evaluation, which concluded that redress systems based on claims for damages are less effective than those based on other forms of penalty such as lump-sums.³⁰

In order to avoid the burden of formal redress procedures in situations where incorrect or missing information can be easily remedied, any omission of information must be first notified to the employer, who has 15 days to supply the missing information.

Article 15 – Right to redress

This provision establishes the principle that Member States must ensure that national legal systems provide access to effective and impartial dispute resolution and a right to redress and, where appropriate, compensation, for infringements of the rights established under the proposed Directive. It reflects Principle 7 of the European Pillar of Social Rights.

Article 16 – Protection against adverse treatment or consequences

This provision requires Member States to provide workers complaining about breaches of provisions adopted pursuant to this Directive with adequate judicial protection against any adverse treatment or consequences by the employer.

Article 17 – Protection from dismissal and burden of proof

If a worker considers that he or she has been dismissed or subject to equivalent detriment (such as on-demand worker ceasing to be assigned work) on the ground that he or she applies or enjoys the rights established in this Directive, and is able to establish facts which support this assertion, this provision places on the employer the burden to prove that the dismissal or alleged detrimental treatment was based on other objective reasons.

Article 18 – Penalties

This provision requires Member States to provide for effective, proportionate and dissuasive penalties for breaches of the obligations under this Directive, and to make sure that they are applied.

Chapter VI – Final provisions

Article 19 – More favourable provisions

This is a standard provision allowing Member States to provide a higher level of protection than that guaranteed by the proposed Directive, and preventing its use to lower existing standards in the same fields.

Article 20 – Implementation

³⁰ SWD(2017)205 final, page 26.

This provision establishes the maximum period that Member States have in order to transpose the Directive into national law and communicate the relevant texts to the Commission. This period is set at two years after the date of entry into force. Moreover, it highlights that pursuant to Article 153(3) TFEU Member States may entrust the Social Partners with the implementation of the Directive, where Social Partners 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.

Article 21 – Transitional arrangements

This article provides for the transition between Directive 91/533/EEC and the entry into force of the proposed Directive.

Article 22 – Review by the Commission

This is a standard provision requiring the Commission to report to the co-legislator on the application of this Directive including the assessment of any need to revise and update the Directive.

Article 23 – Repeal

This provision stipulates the date on which Directive 91/533/EEC is repealed, specifying that all references to the repealed Directive shall be construed as references to the new one.

Article 24 – Entry into force and Article 25 - Addressees

These are standard provisions stipulating that the Directive is to enter into force on the twentieth day following its publication in the Official Journal and is addressed to the Member States.

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 Committee¹,

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

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.
- (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

¹ OJ C , , p. .

² OJ C , , p. .

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).

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.

- (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 worker⁴ 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.
- (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

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.

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/EC⁶ and Directive 2014/50/EU of the European Parliament and of the Council.⁷
- (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

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).

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.
- (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.

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).

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.
- (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 evaluation¹¹ 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

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).

¹¹ SWD(2017)205 final, page 26.

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.
- (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,

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.

¹² OJ C 369, 17.12.2011, p. 14.

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 enterprises¹³ or in any subsequent act replacing that Recommendation.

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;

¹³ OJ L 124/36, 20.05.2003.

- (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)(1)(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)(1)(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