



### Commission's proposal to increase transparency and predictability of working conditions - Questions and Answers

Brussels, 21 December 2017

**As part of the follow-up to the European Pillar of Social Rights, the European Commission has adopted today a proposal for a new Directive for more transparent and predictable working conditions across the EU.**

See also press release [here](#).

#### **What is this new proposal about and where does it come from?**

The Commission's proposal for a Directive on transparent and predictable working conditions is part of the initiatives accompanying the [Proclamation of the European Pillar of Social Rights](#). It sets out new rights for all workers and will serve in particular to combat cases of insufficient protection for workers in non-standard forms of employment. It will also limit the administrative burden on employers and serve to maintain a dynamic labour market through modern work patterns and employment relations. In so doing, it establishes a new, fit-for-purpose level-playing field across Europe which Member States, including social partners, can complement.

The initiative builds on the [Written Statement Directive from 1991](#), which is currently in force and requires updating in the light of changes in the world of work. The Commission's [REFIT](#) evaluation of that Directive showed that many workers in the EU, such as domestic workers and those who perform on-demand work, do not receive a written confirmation of their working conditions or do not receive all the information they need in a timely manner. The consultation on the [European Pillar of Social Rights](#) also showed that more predictability should be provided to workers, in particular those in non-standard forms of employment, such as casual work. This is why the Commission is proposing a new Directive on transparent and predictable working conditions which repeals the current Written Statement Directive. The new proposal reinforces the rights provided for in the current rules and adds new common rights for all workers on their working conditions including on probation, work predictability, training and support to transition to more secure employment.

#### **Who is covered under this Directive?**

In the third quarter of 2017, Eurostat data showed that employment levels in the EU have never been as high as now, the total number of workers in the EU amounting to 236 million. The new Directive will cover all workers in the Union, except from the self-employed. This would come down to approximately 200 million workers based on 2016 employment figures.

Based on estimates from the study underpinning the Impact Assessment, the changes and clarifications to the personal scope of the proposed Directive will bring some 2-3 million extra workers within the scope of the Directive. These include in particular casual workers (for instance those carrying out on-demand or intermittent work), short-term employees, domestic workers, platform workers or voucher-based workers.

Member States could decide to exclude very short-term assignments of less than 8 hours per month from the scope of the Directive.

#### **What are new and non-standard forms of employment?**

Temporary or short-term contracts, part-time and on-demand work, as well as employment relationships between more than two parties are usually regarded as non-standard forms of employment – as opposed to a standard employment relationship which typically refers to full-time work on a permanent contract.

Within these categories, a variety of forms can be identified, for example casual work (i.e. zero-hour contracts, such as for instance a shelf-stacker in the supermarket who only gets called when there is a lot of business), temporary agency work (i.e. interim positions) or platform work (i.e. people working for digital platforms, without having a fixed work place). Eurofound<sup>[1]</sup> identified several new forms of employment that include for example non-conventional workplaces, support of information and communication technologies, or an organisation of the employment relationship that differs from traditional forms. While many new forms of work are beneficial to workers and employers and

contribute to labour market innovation overall, such as job sharing, some raise concerns both for working conditions and labour market competition, such as casual work.

### **How many people work under precarious conditions?**

An estimated 4 to 6 million individuals across the EU can be classified as casual workers with low levels of job and income security, poor social protection, little access to training and, in some cases, quite repetitive work. Moreover, according to Eurostat, about 7 million or almost 28% of all part-time workers in the EU in 2016 would have wanted to work more. Almost 4 million persons work at most 8 hours per week and about 1.6 million temporary contracts run for less than one month. Domestic workers, of whom there are some 3 million in the EU, also typically have very low job security, especially if they lack an employment contract. Further vulnerable groups include crowd/platform workers, temporary agency workers, voucher-based workers, and those workers who are falsely categorised as self-employed.

### **Why did the Commission decide to act?**

The general consultation on the European Pillar of Social Rights, and the targeted consultation of social partners on this proposal, showed that there is a risk of insufficient protection for workers, in particular for those in new and non-standard forms of employment. Lack of EU action would have serious long-term consequences for workers and for the labour market. Transparency and predictability of working conditions are in the interest of both employees and employers, as well as to modern and performing labour markets.

### **What is the definition of worker used at EU level?**

Most EU legislation on working conditions, including EU rules on labour contracts, do not give a definition of worker or employee at all, or refer to national definitions of 'employees' or 'employment relationship' for defining to whom the rules apply. As a consequence, the rules applying to the same categories of workers are being applied in different ways across the EU. Furthermore, it leads to inconsistencies in coverage for the growing category of non-standard forms of employment.

To close such gaps, the Commission follows settled case-law by the Court of Justice in the current proposal, which defines an employment relationship as follows: *'for a certain period of time, a person performs services for and under the direction of another person, in return for which he or she receives remuneration'*.

### **Which new rules and minimum standards will this proposal introduce?**

	<b>CURRENT RULES</b>	<b>NEW RULES</b>
<b>Type of information offered by employer</b>	<ul style="list-style-type: none"><li>- identity of parties;</li><li>- place of work;</li><li>- specification of work;</li><li>- starting date;</li><li>- duration (for temporary contracts);</li><li>- paid leave;</li><li>- notice period;</li><li>- amount and components of remuneration;</li><li>- length of working day or week;</li><li>- applicable collective agreements.</li><li>- Additional information for expatriate employees.</li></ul>	<p>In addition to current elements, information on:</p> <ul style="list-style-type: none"><li>- probation (if any);</li><li>- training provided by employer;</li><li>- arrangements and remuneration for overtime</li><li>- information on working time for workers on very variable schedules;</li><li>- social security institution where contributions are paid</li></ul>
<b>Deadline to provide the information</b>	Within 2 months following the start of the employment relationship	At the latest on the first day of work
<b>How the information should be provided</b>	Written contract, letter of engagement or one or more	- A written document, in paper or electronic form

	written documents	<ul style="list-style-type: none"> <li>- Member States are obliged to provide templates and accessible information to reduce burden on employers</li> </ul>
<b>Material rights</b>	None	<ul style="list-style-type: none"> <li>- limit the length of probationary periods to 6 months, unless longer is objectively justified;</li> <li>- right to work for other employers, with a ban on exclusivity clauses and restrictions on incompatibility clauses;</li> <li>- right to predictability of work: workers with variable working schedules determined by the employer (i.e. on-demand work) should know in advance when they can be requested to work;</li> <li>- Possibility to request a more stable form of employment and to receive a justified written reply (within 1 month; for SME's within 3 months and orally for repeated requests)</li> <li>- right to cost-free mandatory training</li> </ul>
<b>Enforcement</b>	Member States provide for the necessary measures to enable employees pursue possible claims through a judicial process after possible recourse to other competent authorities. This may be subject to notification of the employer by the employee, and failure of the employer to reply within 15 days.	<p>Introduction of two alternative procedures for addressing missing information:</p> <ul style="list-style-type: none"> <li>- positive presumptions (if no relevant information supplied, no probation, permanent and/or full time employment relationship);</li> <li>- administrative procedure to issue injunction to employer to supply missing information.</li> </ul> <p>In addition, provisions based on existing social acquis on compliance, right to redress, prevention of adverse treatment, burden of proof on dismissal, and penalties are introduced.</p>

### What will be the benefits of this proposal for workers?

The aim of the proposal is that workers in Europe will be better informed about their conditions of employment and able to enjoy improved working and living conditions.

The Commission's proposal is underpinned by an [Impact Assessment](#), which, on the basis of an external study, has analysed the existing national provisions and derived the numbers of workers who would benefit from the proposal.

Thanks to the reduced exclusions and broad definition of 'worker', at least 2-3 million additional workers will benefit from transparency on their working conditions.<sup>[2]</sup> Under the current rules, workers who work less than 8 hours a week or whose contracts are limited at less than one month can be excluded from the Directive currently applicable. The Commission's proposal would only allow for an exclusion of workers who work less than 8 hours a month.

Up to 31 million workers will be entitled to more information than currently provided, for example on probation, working schedule or social security protection. Up to 16 million workers every year will be able to start a new job with full transparency of working conditions from the first day instead of up to 2 months later.

Between 4 and 7 million workers will get the possibility to look for additional work due to the enhanced predictability (reference hours and minimum advance notice). Enhanced predictability should also have a positive impact on their work-life balance and health.

Some 14 million workers could use the right to receive a written reply to a request for more stable employment and thus get support in dialogue with their employer to move to a more stable form of work. Some 3-6 million workers will be protected against excessive probation periods. Without exclusivity clauses up to 364.000 workers may seek additional work. Workers' right to receive cost-free mandatory training would be confirmed. In general, workers whose rights are not respected would have easier access to redress.

Workers falling outside the scope of national definitions of worker because, for instance, they perform casual work, or are on zero-hour contracts or similar arrangements will be entitled to basic rights as information on essential aspects of their working conditions, and increased predictability and protection in the organisation of their work.

Bogus self-employment (i.e. with self-employment contracts but a de facto-employment relationship as defined in the directive) will be easier to detect and as a result workers will receive additional information, rights and, if need be, access to enforcement, on the basis of the implementation by legislation or collective agreements in the Member States.

### **What will be the benefits for companies?**

The new rules will create a level-playing field for companies across the EU. Employers already providing enhanced information and using more secure contracts will benefit as their competitors across the EU will also need to provide at least the same basic protection. The Commission estimates that 16% of employers will benefit from increased legal certainty. Cross-border hiring and labour mobility will be supported by more uniform minimum provisions.

Thanks to the prohibition of exclusivity clauses, workers will be more available for other, additional jobs and employers, which might generate up to €167 million additional revenues per year. The provision of templates and of information at national level will facilitate the preparation of labour contracts and raise awareness of existing legislation both among professional employers and more marginal employers.

Other benefits include higher staff retention and loyalty, improved worker relations, fewer complaints from workers, fewer court cases relating to working conditions, better resource planning and work allocation. Overall, the proposed measures could have a positive impact on productivity.

### **How does the proposal protect European competitiveness?**

Competitiveness is crucial for job creation and economic growth, and the proposal has been designed to preserve and foster it. The proposal does not prohibit any forms of employment but rather aims to curb abusive forms of flexibility - such as preventing workers to seek work elsewhere while not guaranteeing any paid hours - which can lead to unsustainable competition based on lowering social standards. Overall it balances protection of workers with safeguarding necessary flexibility for business.

The Commission considers that the proposed package will not just be good for workers but will also benefit business and Member States. A majority of companies in the EU, including many SMEs, make only a marginal use of non-permanent forms of employment. They will regain some of their competitive capacity vis-à-vis those employers who made casual employment the core of their business model.

We also know that transparency and predictability in working conditions makes workers more productive and innovative. In that sense the proposal supports what has always been EU's main competitive advantage: quality and innovation rather than poor labour standards.

### **Aren't the social partners better placed to regulate practices regarding employment relationships?**

In line with EU Treaties, the Commission consulted trade unions and employers' organisations in a two-

stage approach to see if they were willing to address the challenges by an agreement between themselves. However, the views of the social partners on the need for legislative action were mixed. There was no agreement among them to enter into negotiations to conclude an agreement at Union level. Trade unions were broadly in favour of updating the EU rules and suggested additional provisions. All contributions from social partners have been taken in due consideration in the drafting of the proposal.

Nonetheless, the proposal provides extensive room for social partners to implement the Directive and negotiate provisions that adapt the rights to the specificities of different sectors. Indeed, the Commission aims at ensuring a common protection for all workers, also those not covered by collective agreements, while ensuring that social partners are able to negotiate agreements that can better address specific national or sectoral needs.

[1] Eurofound (2015), New forms of employment, Publications Office of the European Union, Luxembourg.

[2] The methodology on the basis of which this and following figures were derived is explained in the Impact Assessment accompanying the proposal.

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