European Committee of the Regions

**SEDEC-VI/036**

**130th plenary session, 4-5 July 2018**

# OPINION

# Transparent and predictable working conditions in the European Union

THE EUROPEAN COMMITTEE OF THE REGIONS

- is concerned with the possibility that, under certain conditions, non-standard employment, particularly temporary jobs, disproportionately affects often younger, less educated and less skilled people, most of whom do not voluntarily enter into such employment relationships;
- calls for the debate to also pay special attention to the 4-6 million workers in the EU with on-demand and intermittent employment contracts;
- strongly supports any efforts to secure a minimum level of fair working conditions across the EU for all different forms of employment contract and to avoid creating unjustified further bureaucracy and red tape for small and medium-sized enterprises. These minimum rights would offer all workers the necessary protection, there would be a clear reference framework to which the national legislators and the courts could refer;
- is of the opinion that new minimum rights at EU level not only ensure a level playing field, insofar as different national approaches lead to distortions of competition and barriers to the free movement of workers within the internal market. They can also improve the effectiveness of the EU labour market, promote economic and social progress and cohesion and foster a fresh process of convergence towards better working and living conditions while, at the same time, maintaining the integrity of the internal market;
- underlines the importance of providing written information to both employers and workers, as this ensures greater transparency and reduces asymmetries between the two contracting parties. However, this is only an initial step towards preventing precarious employment;
- highlights the possibility for the social partners of concluding a collective agreement on minimum rights, taking into account the overall protection of workers and ensuring that the minimum conditions for working conditions set out in this directive are not undercut;
- recommends that the new substantive rights be expanded to include a ban on zero-hours contracts and the right to guaranteed working hours and more rights in connection with dismissal, since otherwise the scope of the substantive rights will fall short;
- highlights the important role of LRAs in designing, implementing and evaluating measures in areas where they often have key competences, such as social and employment policy.



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Reference document

Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union
COM(2017) 797 final

**Opinion of the European Committee of the Regions – Transparent and predictable working conditions in the European Union**

## I. RECOMMENDATIONS FOR AMENDMENTS

**Amendment 1**

Chapter I – Article 1(1)

| *Commission proposal* | *CoR amendment* |
|---|---|
| The purpose of this Directive is to improve working conditions by promoting more secure and predictable employment ***while ensuring labour market adaptability***. | The purpose of this Directive is to improve working conditions by promoting more secure and predictable employment. |

| *Reason* |
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| The analytical document (C(2017) 2621 of 21 September 2017) of the second phase of the social partner consultation examines the disadvantages relating to working conditions in flexible forms of employment. In addition, the focus of the Directive on ensuring a flexible labour market is not covered by the legal basis of Article 153 TFEU. |

**Amendment 2**

Chapter I – Article 1(4)

| *Commission proposal* | *CoR amendment* |
|---|---|
| ***Paragraph 3 shall not apply to an employment relationship where no guaranteed amount of paid work is predetermined before the employment starts.*** | |

| *Reason* |
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| Paragraph 4, which stipulates that the exemption in paragraph 3 does not apply when no guaranteed amount of paid work is specified, would explicitly acknowledge that employment contracts without a guaranteed number of hours of paid work – so-called zero-hours contracts – may be possible and permitted. |

**Amendment 3**

Chapter I – Article 1(5)

| *Commission proposal* | *CoR amendment* |
|---|---|
| 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 | 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 |

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|---|---|
| is not party to the employment relationship. This paragraph is without prejudice to Directive 2008/104/EC. | is not party to the employment relationship. ***However, employers shall continue to be responsible for ensuring that the obligations laid down are met correctly and in full.*** This paragraph is without prejudice to Directive 2008/104/EC. |

| ***Reason*** |
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| Such a transfer is acceptable only on condition that employers continue to be responsible for providing correct and comprehensive information and are jointly and severally liable. Otherwise, there is a risk that they exempt themselves from their obligation by transferring it to a third party and the Directive's safeguards become meaningless. The possibility of transferring the obligation to the worker concerned must be ruled out. |

**Amendment 4**

Chapter I – Article 1(6)

| ***Commission proposal*** | ***CoR amendment*** |
|---|---|
| ***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.*** | |

| ***Reason*** |
|---|
| It is unclear whether the derogation in paragraph 6 is limited to family members or also covers "domestic workers". "Persons belonging to a household" are family members. Generally, they do not perform work for the household in the sense of paid work – only this may be covered by the Directive. If domestic workers are intended here, then this would entail an unjustified, unequal treatment of this group, which would contravene ILO Convention No 189 on the working conditions of domestic workers. |

**Amendment 5**

Chapter I – Article 2

| ***Commission proposal*** | ***CoR amendment*** |
|---|---|
| ***Definitions***<br>***1. For the purposes of this Directive, the following definitions shall apply:***<br>***(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;***<br>***(b) 'employer' means one or more natural or legal person(s) who is or are directly or*** | ***The definitions of workers, employers and employment relationships shall be regulated in or governed by applicable legislation in a Member State.*** |

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|---|---|
| ***indirectly party to an employment relationship with a worker;***<br>***(c) 'employment relationship' means the work relationship between workers and employers as defined above;***<br>***(d) 'work schedule' means the schedule determining hours and days on which performance of work starts and ends;***<br>***(e) 'reference hours and days' means time slots in specified days during which work can take place at the request of the employer.***<br>***2. For the purposes of this Directive the terms 'microenterprise', 'small enterprise' and 'medium-sized enterprise' shall have the meaning set out in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises or in any subsequent act replacing that Recommendation.*** | |

| ***Reason*** |
|---|
| The proposed definitions are confusing, raise a number of legal issues, and are expected to be controversial. These definitions are relevant to labour, social security and tax law, which are Member State responsibilities, and they should therefore be laid down primarily at national level. |

**Amendment 6**

Chapter II – Article 3(2)(i)

| ***Commission proposal*** | ***CoR amendment*** |
|---|---|
| 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; | 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 ***as well as the formal requirements for the notice of termination and the deadline for bringing an action contesting dismissal***; |

| ***Reason*** |
|---|
| When providing information on the procedure to be followed, it should be clarified that this information shall also include, at the very least, the formal requirements for the notice of termination as well as any deadline for bringing an action contesting dismissal. |

**Amendment 7**

Chapter II – Article 3(2)(m)

| *Commission proposal* | *CoR amendment* |
|---|---|
| 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; | any collective agreements governing the worker's conditions of work ***as well as the time limits laid down in the collective agreements for claims arising from those agreements***; 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; |

| *Reason* |
|---|
| This obligation must be expanded to include the obligation to provide information on possible time limits laid down in collective agreements for claims arising from those agreements. For practical reasons, this detail is important in order to prevent workers from failing to exercise their rights because they are not aware that deadlines might be relatively short. |

**Amendment 8**

Chapter II – Article 4(1)

| *Commission proposal* | *CoR amendment* |
|---|---|
| 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. | 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 ***shall be handed over to the worker in paper form or*** be provided and transmitted electronically as long as it is easily accessible by the worker, and can be stored and printed ***and an acknowledgement of receipt is issued***. |

| *Reason* |
|---|
| Sentence 2 of paragraph 1 stipulates that the document informing the worker must be provided or transmitted electronically if it is readily accessible. This might be insufficient in some cases. Therefore, each worker should have the right to choose between a paper or electronic version. This area should not be exempt from the efforts to achieve a paperless working environment. |

**Amendment 9**

Chapter II – Article 5

| *Commission proposal* | *CoR amendment* |
|---|---|
| Member States shall ensure that any change in the aspects of the employment relationship referred to | Member States shall ensure that any change in the aspects of the employment relationship referred to |

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| 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. | in Article 3(2) and to the additional information for workers posted or sent abroad in Article 6 shall be ***communicated*** 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. |

| ***Reason*** |
|---|
| Sentence 2 of paragraph 1 stipulates that the document informing the worker must be provided or transmitted electronically if it is readily accessible. This might be insufficient in some cases. Therefore, each worker should have the right to choose between a paper or electronic version. This area should not be exempt from the efforts to achieve a paperless working environment. |

**Amendment 10**

Chapter II – Article 6(2)

| ***Commission proposal*** | ***CoR amendment*** |
|---|---|
| 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: | 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 ***to the information laid down in paragraph 1 and Article 3(2)*** be notified of ***the following by being handed a document in paper or electronic form***: |

| ***Reason*** |
|---|
| Self-explanatory. |

**Amendment 11**

Chapter II – Article 6(2)b

| ***Text proposed by the Commission*** | ***CoR amendment*** |
|---|---|
| ***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.*** | ***information that is relevant*** to ***posted workers in his or her own language or if quality of translation cannot be guaranteed, 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.*** |

| ***Reason*** |
|---|
| The reference to the homepage to be set up in every Member State (under Article 5(2)(a) of Enforcement Directive 2014/67/EU) does not adequately meet the requirement to provide information, as this reference assumes that every Member State has fulfilled its obligation. Yet, it can be considered an alternative solution in those cases, where an adequate quality of translated information cannot be guaranteed. |

**Amendment 12**

Chapter II – Article 6(3)

| *Commission proposal* | *CoR amendment* |
|---|---|
| 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***. | The information referred to in paragraph 1 (b) and paragraph 2 (a) ***shall be made available in a language that the posted workers are able to understand***. |

| *Reason* |
|---|
| Seeking to fulfil the information obligation by providing a reference to the current rules does not meet the requirements to provide sufficient information to foreign workers if the rules are not available in a language they can understand. Especially when it comes to the remuneration they can expect abroad, foreign workers should be informed directly and clearly and not referred to provisions they cannot understand. |

**Amendment 13**

Chapter II – Article 6(4)

| *Commission proposal* | *CoR amendment* |
|---|---|
| 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. | 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 ***two weeks*** or less. |

| *Reason* |
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| The proposed exemption from the information obligation for foreign assignments with a duration of no more than four consecutive weeks should be rejected. This creates a loophole for circumventing the obligations to provide information. After all, the mandatory rules of the host country apply from the first day of the assignment. The Committee of the Regions therefore recommends reducing the period of the exemption to a total of no more than two weeks. |

**Amendment 14**

Chapter III – Article 7(2)

| *Commission proposal* | *CoR amendment* |
|---|---|
| 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. | 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 ***or where the worker is temporarily unfit for work for an extended period***. |

| ***Reason*** |
|---|
| Self-explanatory. |

**Amendment 15**

Chapter III – Article 8(2)

| ***Commission proposal*** | ***CoR amendment*** |
|---|---|
| ***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.*** | |

| ***Reason*** |
|---|
| It is Member State legislators and courts that are responsible for balancing the conflicting interests of the parties to the employment contract – such as the worker's freedom to choose an occupation and the business interests of the employer – not the employers themselves. Furthermore, in light of the new definition of business secrets under EU Directive 2016/943/EU (which Member States must implement by June 2018), employers could largely decide on their own what information they wish to protect. The same applies to the notion of "avoidance of conflicts of interest", which needs to be interpreted. Uniform European regulation of this area of law is therefore unnecessary. This is also not covered by the legal basis of Article 153(2)(b) TFEU. |

**Amendment 16**

Chapter III – Article 10(1)

| ***Commission proposal*** | ***CoR amendment*** |
|---|---|
| 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. | Member States shall ensure that workers with at least six months' seniority with the same employer may ***apply for*** a form of employment with more predictable and secure working conditions where available***, on an equal footing with other applicants***. |

| ***Reason*** |
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| A worker with at least six months' seniority with the same employer has no precedence over external applicants when applying for a more permanent post or where one of the external applicants is better qualified for the post. |

**Amendment 17**

Chapter III – Article 10(2)

| ***Commission proposal*** | ***CoR amendment*** |
|---|---|
| The employer shall provide a written reply within | The employer shall provide a written reply within |

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| 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.*** | one month of the ***application***. ***If the application is rejected, the correctness of the grounds must be amenable to review.*** |

| ***Reason*** |
|---|
| The legal consequences of failing to meet the obligation to reply must be clearly stipulated, namely that if the application is rejected, the correctness of the grounds must be amenable to review. This is the only way to ensure that employers treat the wishes of workers seriously and do not just give any reply to satisfy the formality.<br>The exemption provided in sentence 2 of paragraph 2 should be rejected, under which micro, small and medium-sized enterprises may provide the answer orally and within a period of three months. This exception would cover all enterprises with up to 249 employees and an annual turnover of up to EUR 50 million, representing 99% of all businesses in the EU, and the position of employees in these businesses – approximately 65 million people within the EU – would be significantly weakened. Besides the difficulty of determining whether a "similar request" has already been made, an oral response to the request cannot be proven and so cannot be used for claims. The exemption for SMEs is therefore rejected, since otherwise the regulatory content of Article 10 would be devoid of legal consequences. |

**Amendment 18**

Chapter IV – Article 12

| ***Commission proposal*** | ***CoR amendment*** |
|---|---|
| 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. | Member States ***shall*** allow social partners to ***maintain and*** conclude collective agreements, in conformity with the national law or practice, which, while respecting the overall protection of workers ***and provided that the minimum standards set out in this Directive are not undercut***, establish arrangements concerning the working conditions of workers which differ from those referred to in Articles 7 to 11. |

| ***Reason*** |
|---|
| Article 12 provides for the minimum standards in Articles 7 to 11 to be modified under collective agreements on condition that the overall protection of workers is maintained. Flexibility of this kind is necessary given the different labour markets, national rules and forms of employment, including those of public officials, that exist in the public sector in the Member States. However, departures from the law by means of collective agreement do not pose any issues – only in cases where they include an equivalent of all regulatory objectives – and do not relate to other matters. |

**Amendment 19**

Chapter IV – Article 13

| *Text proposed by the Commission* | *CoR amendment* |
|---|---|
| ***Compliance***<br>***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.*** | |

| *Reason* |
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| Article 13 is superfluous, as Article 15 on the right to redress is sufficient. |

**Amendment 20**

Chapter V – Article 14(1)

| *Commission proposal* | *CoR amendment* |
|---|---|
| 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: | 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,*** the following ***two*** systems shall apply: |

| *Reason* |
|---|
| This proposal introduces instruments to penalise non-compliance with the information requirements. However, these instruments only come into play when the worker becomes aware that the information is incomplete and has notified the employer of this, after which the employer then has fifteen days in which to make good on their information obligations. The condition therefore is that the worker must play an active part. This is not appropriate, since the responsibility for providing comprehensive information is shifted to the person to be informed. In general, however, that person will shy away from any discussion with the employer, especially just after they have started their job. It is right that the legal consequences should apply without the worker having taken active steps to highlight the problem. |

**Amendment 21**

Chapter V – Article 14(1)(a)

| *Commission proposal* | *CoR amendment* |
|---|---|
| the worker shall benefit from favourable presumptions ***defined by*** the Member State. Where the information provided did not include | the worker shall benefit from favourable presumptions ***which*** the Member State ***is obliged to define***. Where the information provided did not |

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| 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; | include the information referred to in points (e), (f), (k) or (l) of Article 3(2), ***the working conditions reported by the worker shall apply as agreed***. Employers shall have the possibility to rebut the presumptions; ***and*** |

| ***Reason*** |
|---|
| Member States are obliged to introduce the mechanism of presumption specified under (a). However, the proposal is too vague, under which more favourable presumptions are defined by the Member States. It must be spelt out that, in the event of non-compliance with information obligations, in principle the working conditions reported by the worker shall apply as agreed, as shall the presumption of an open-ended full-time job which is already mentioned in the rules and which can be rebutted by the employer. |

**Amendment 22**

Chapter V – Article 14(1)(b)

| ***Commission proposal*** | ***CoR amendment*** |
|---|---|
| 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. | ***additionally*** 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. |

| ***Reason*** |
|---|
| The option of lodging a complaint before the competent authority (point b) contains no favourable legal consequences for workers and should therefore not be presented to Member States as an alternative choice, but may only serve to complement the proposal in point (a). As regards the second option, a worker whose employer has not fulfilled their obligation is dependent on an administrative procedure, the duration and outcome of which depends crucially on the authority and, in the best case scenario, will result in an administrative penalty. Moreover, this option does not prevent information requirements from being circumvented. |

**Amendment 23**

Chapter V – Article 17(1)

| *Commission proposal* | *CoR amendment* |
|---|---|
| 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. | Member States shall take the necessary measures to prohibit***, and declare as legally ineffective,*** 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. |

| *Reason* |
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| In accordance with paragraph 1, dismissal or preparations for such a dismissal shall be prohibited by the Member States on the basis of rights conferred by this Directive. In combination with Paragraph 2, under which workers who think they have been dismissed for exercising rights under this Directive may request a written justification and opinion, this is not a sufficient tool for the exercising of rights arising from this Directive. For protection to be really effective, explicit legal consequences are needed to make inoperable any dismissal or preparations for dismissal for exercising the rights provided for in this Directive. |

**Amendment 24**

Chapter V – Article 17(2)

| *Commission proposal* | *CoR amendment* |
|---|---|
| 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. | 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. ***Member States shall also take the necessary steps to ensure that the deadline for bringing an action contesting dismissal is suspended as long as the worker has not received written justification from their employer.*** |

| *Reason* |
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| From a practical point of view, it is essential that the deadline for contesting dismissal is suspended as long as the worker has not received justification in writing from their employer. Otherwise, there is a risk that this provision will prove to be detrimental to workers who, in anticipation of receiving the legally required justification, miss the deadline for bringing an action. |

**Amendment 25**

Chapter V – Article 17(3)

| *Text proposed by the Commission* | *CoR amendment* |
|---|---|
| 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. | Member States shall take the necessary measures to ensure that, when workers referred to in paragraph 2 ***present***, before a court or other competent authority, ***evidence*** 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. |

| *Reason* |
|---|
| It is not clear how specific/substantiated the facts presented by the worker have to be. It should be enough to present evidence that points to such punitive action. Therefore, the word "facts" should be replaced by "evidence". |

**Amendment 26**

Chapter V – Article 18

| *Commission proposal* | *CoR amendment* |
|---|---|
| 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. | 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 ***must*** also comprise ***appropriate*** payment of compensation. |

| *Reason* |
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| Fines alone are not enough to penalise infringements effectively. They are imposed to varying degrees of effectiveness depending on the Member State and the circumstances within the competent authorities there. In addition, fines provide no benefits for workers whose rights have been infringed. |

**Amendment 27**

Chapter VI – Article 19(1)

| *Commission proposal* | *CoR amendment* |
|---|---|
| This Directive shall not constitute valid grounds for reducing the general level of protection | This Directive shall not constitute valid grounds for reducing the general level of protection |

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|---|---|
| already afforded to workers within Member States. | already afforded to workers within Member States. ***In addition, implementation of this Directive must not be grounds for any regression in relation to the situation which already prevails in each Member State regarding the general level of worker protection and in the areas to which it applies.*** |

| ***Reason*** |
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| Paragraph 1 needs to be expanded to ensure that the overall level of protection cannot be lowered and that, for areas covered by the Directive, no deterioration is allowed in the areas to which it applies as a result of the its implementation. Such a specific prohibition is quite common in social policy directives and is recognised by the ECJ, for example Article 8(3) of the annex to the fixed-term work directive 1999/70/EC (social partner agreement as an annex to the framework directive) and in Article 9(4) of the framework directive on informing and consulting workers (2002/14/EC). |

**Amendment 28**

Chapter V – Article 21

| ***Commission proposal*** | ***CoR amendment*** |
|---|---|
| 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.*** | The rights and obligations set out in this Directive shall apply to existing employment relationships as from [entry into force date + 2 years]. |

| ***Reason*** |
|---|
| We welcome the fact that the rights and obligations arising from this Directive shall also be applied to existing employment relationships. However, it is unclear how sentence 2 and thus sentence 3 stand in relation to this. If the Directive is to apply to existing employment relationships, then these sentences are redundant. The obligation to provide information must – in existing employment relationships too – apply regardless of any request. Finally, as employers are the subject of labour rules, they must take account of changes to the legal situation and meet their obligations based on those requirements, without being called upon by workers to behave in accordance with the law. |

## II. POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS

Changing labour markets in Europe

1. welcomes the fact that, since the 2008-2013 economic and financial crisis, the unemployment rate has steadily fallen and currently stands at 7.3% in the EU and 8.6% in the euro area;

2. points out, however, that the economic and financial crisis has heavily affected younger workers in particular. The youth unemployment rate stood at 16.7% in April 2017. It is therefore still above pre-crisis levels and is more than double the general unemployment rate;

3. deplores the fact that, despite action at EU level, it has not proved possible to solve the problem of excessive youth unemployment. Therefore points out that, in addition to labour market measures, it is important to take action to increase the mobility of the population and for the authorities to seek to gear educational curricula more closely to the real needs of the labour market;

4. notes that, in 2016, the employment rate for those aged between 20 and 64 stood at 71.1%, which was the highest annual average ever recorded in the European Union. Against the backdrop of that average, there are, however, sharp differences between the Member States. The employment rate among people aged 25-54 has remained almost unchanged since 2001, whereas it has significantly increased among older people (aged 55-64) and decreased among the young (aged 15-24);

5. welcomes the fact that the gap in the employment rate between women and men has narrowed. Mostly this is due to increasing employment rates for women. However, there are also Member States in which the smaller gap is due to lower employment rates for men;

6. finds it regrettable that the share of people working only part time increased from 14.9% in 2002 to 19.0% in 2015. In terms of ratio, there is a clear difference between men and women. Accounting for just under one third (31.4%) of the female workforce, in 2016 considerably more women were working part time than men (8.2%);

7. is concerned with the possibility that, under certain conditions, non-standard employment, particularly temporary jobs, disproportionately affects often younger, less educated and less skilled people, most of whom do not voluntarily enter into such employment relationships. In 2015, only 37% of younger workers had a permanent full-time employment contract. This compares to 48% in 2002, which is a marked decrease;

8. notes that, while permanent full-time contracts are still the predominant form of employment relationship, over the last 20 years non-standard forms of employment have increased significantly. In 1995, 32% of workers in the EU-15 had non-standard contracts. By 2015, this proportion had risen to 36% in the EU-28, and this upward trend is continuing;

Challenges in the context of the change

9. notes that we live in times of increasing interdependence in the global economy, complex international value chains, and faster technological and business-organisation innovation cycles with increased networking and digitalisation of working processes, labour markets are changing at an ever increasing rate and a growing number of new non-standard jobs are emerging. In order for workers not to find themselves in an uncertain situation, the right balance between flexibility and security needs to be established;

10. points out that some new, non-standard forms of employment, which are expected to grow in the coming years, are a particular source of concern, given the increased uncertainty regarding job stability, income and access to social protection. These include intermittent employment, (non-voluntary) limited part-time work, voucher-based work and crowd work;

11. draws attention to the fact that certain non-standard forms of employment which have existed for some time, such as paid internships and temporary agency work, continue to pose a challenge in terms of job security and appropriate working conditions;

12. stresses that, overall, workers in non-standard jobs are more frequently faced with non-stable employment. In most cases, non-standard jobs offer lower hourly wages than permanent full-time jobs. Furthermore, people in non-standard jobs have a higher risk of becoming unemployed;

13. underlines that, in most cases, those in non-standard employment pay fewer and lower social security contributions, which has a negative impact on their entitlement to social benefits and on the amount and duration of such benefits. In addition to physical health and job security problems, those in insecure jobs often suffer from more stress at work;

14. notes that people in non-standard jobs tend to have less access to workplace representation and to employment regulated by collective agreements. The low rate of conversion from temporary to permanent jobs suggests that inequality is maintained over a longer period. Figures from Member States show that less than 50% of those employed on temporary contracts in a given year, had a permanent full-time job three years later;

15. takes the view that non-standard forms of employment benefit the economy. Yet, if no basic security is guaranteed, they may also entail disadvantages for the employer. Although there might initially be cost savings, there are also considerable hidden costs. The management of a workforce consisting of permanent and temporary staff is complex, carries the risk of conflict and the danger of lost motivation, which can result in productivity losses. Job insecurity may hamper innovation and lead to a lack of confidence and risk-averse behaviour;

Need for action in the context of change

16. notes that, important steps must be taken towards improving worker protection and ensuring more harmonised standards in the European internal market. Existing EU labour law does not

apply equally to all workers and it creates disparities and leads to inequalities in terms of working conditions and social protection in general;

17. points out that the REFIT study aimed at supporting the evaluation of the Written Statement Directive (91/533/EEC), found that there is a core group of protected people (typically workers on permanent standard contracts or long-term contracts), while in many other worker categories there are in practice considerable differences or uncertainty as to whether the provisions of the Directive are applicable to them. Many workers are not sufficiently aware of their basic rights, or they have no confirmation of what these right are;

18. strongly supports any efforts to secure a minimum level of fair working conditions across the European Union for all different forms of employment contract and to avoid creating unjustified further bureaucracy and red tape for small and medium-sized enterprises. These minimum rights would offer all workers the necessary protection, there would be a clear reference framework to which the national legislators and the courts could refer;

19. reiterates that new minimum rights at EU level for the working conditions of employees, and the associated obligation to inform workers in writing about their working conditions, are key, as they provide both employers and workers with more certainty and prevent a damaging race to the bottom among Member States;

20. is of the opinion that new minimum rights at EU level not only ensure a level playing field, insofar as different national approaches lead to distortions of competition and barriers to the free movement of workers within the internal market. They can also improve the effectiveness of the EU labour market, promote economic and social progress and cohesion and foster a fresh process of convergence towards better working and living conditions while, at the same time, maintaining the integrity of the internal market;

General assessment of the proposal for a directive

21. welcomes the fact that, in response to the current challenges facing labour markets, the European Commission has decided to put forward a proposal for a directive on transparent and predictable working conditions in the European Union. The Directive will serve to implement important principles enshrined in the European Pillar of Social Rights and bring European employment legislation into line with the EU labour markets of the 21st century;

22. points out that Articles 27 and 31 of the Charter of Fundamental Rights of the European Union state that workers have the right to information and the right to fair and just working conditions;

23. stresses that local and regional authorities are major public sector employers that must balance budgets, public service delivery and terms and conditions for the workforce. They also have a key role to play in exchanging information and best practices. Local and regional authorities are affected as contracting authorities and they are also involved in the monitoring of potential abuses;

24. underlines that social services, services for labour market integration and adaptation to structural changes as well as social, economic and cultural integration measures, are primarily guaranteed and delivered by local and regional authorities;

25. stresses that it is very important for the Commission to fully respect the subsidiarity principle and underlines that the proportionality principle must be upheld at all costs so as to avoid any additional financial or administrative burdens. The comprehensive social and employment policy responsibilities of national and sub-national authorities should be respected;

26. therefore reiterates its support for the European Commission's initiative aimed at strengthening the social dimension in the EU in accordance with Article 9 of the Lisbon Treaty, according to which the social dimension must be taken into account in all European Union measures;

Positive comments on the proposal for a directive

27. points out that, although the Written Statement Directive (91/533/EEC) was adopted over 25 years ago, its objectives of creating a more transparent labour market and protecting workers' rights, are still of the utmost importance;

28. underlines the importance of providing written information to both employers and workers, as this ensures greater transparency and reduces asymmetries between the two contracting parties. However, this is only an initial step towards preventing precarious employment;

29. welcomes the fact that informing workers of the essential aspects of their conditions of employment, on their first working day at the latest, leads to much more certainty and clarity and, in the context of transnational activities and the cross-border free movement of workers, this is to be regarded as particularly beneficial;

30. acknowledges, in particular, the addition of the following substantive rights or minimum requirements for working conditions:

- the probationary period will be limited to six months,
- workers will be able to work for more than one employer,
- as regards on-demand work – with a variable schedule – the worker must be informed in advance when they are required to work,
- workers may request a substantiated written reply from their employer about more stable forms of employment,
- requests for mandatory training must in future be paid in full by the employer,

and highlights the possibility for the social partners of concluding a collective agreement on minimum rights, taking into account the overall protection of workers and ensuring that the minimum conditions for working conditions set out in this directive are not undercut;

31. points out that there is no consensus in the EU on labour contracts and that this Directive is important in terms of promoting the mobility of workers within the internal market – by

providing minimum information standards which reduce disparities between Member States and by making it easier for both businesses and workers to operate in other Member States;

32. highlights that transparency is useful not only for workers but also for authorities in their efforts to reduce undeclared work, and for employers and potential investors who require legal certainty in relation to working conditions;

33. reiterates the benefits for workers of being provided with personalised information on the key elements of their employment contracts. With such information, workers are more aware of, and more familiar with, the key aspects of their working conditions and their rights;

Critical comments on the proposal for a directive

34. welcomes the fact that the proposed Directive extends employers' obligation to inform workers of their working conditions, and improves the enforceability of this obligation. At the same time, it introduces new substantive rights in the form of "minimum requirements relating to working conditions". However, a critical view is taken of the combination of two independent sets of rules in one single package;

35. is in favour of adapting in this Directive definitions of the notion of worker and employer as well as employment relationship, to the case law of the ECJ and not laying down further rules in this Directive since these still require in-depth discussion. National law as regards the definition of these terms must remain unaffected;

36. notes that many forms of work in the collaborative economy lie mid-way between salaried employment and freelance work. This raises important questions as regards working conditions, health and safety, health insurance, sick pay, unemployment benefits and pensions. All this could give rise to a new category of precarious employment;

37. calls for the debate to pay special attention to non-standard forms of employment, since these come under the scope of the Directive and vary considerably from one Member State to another;

38. calls for the debate to also pay special attention to the 4-6 million workers in the EU with on-demand and intermittent employment contracts;

39. highlights the need for guidance for employers to meet new provisions for non-standard work and the proposed EU right to apply for a more secure and predictable form of employment. Support in determining reference hours and developing processes for managing casual and short-term working is necessary as short-term, part-time and on-call contracts can also be found in the public sector. There is also a need for clarity with regard to the processing of repeat requests from individuals;

40. stresses that the equal treatment and non-discrimination of workers must be guaranteed;

41. notes, overall, that the European Commission's proposed directive can only be a starting point for a broad debate on ways to create sustainable employment in Europe that provides a decent

living, combined with a demand to increase the social rights of all workers in general and ensure that existing rights are applied to all workers;

Additional proposals for a directive and further regulatory requirements

42. urges the European Commission to ensure that the current revision of the Directive also takes account of the forms of self- employment which have emerged and are emerging and the expected guarantee of equal pay for equal work for all those in non-standard employment;

43. notes that the right balance needs to be found between meeting administrative costs and supporting or bolstering local policies that aim to improve salaries and living and working conditions, including for non-standard workers;

44. recommends that the new substantive rights be expanded to include a ban on zero-hours contracts and the right to guaranteed working hours and more rights in connection with dismissal, since otherwise the scope of the substantive rights will fall short;

45. points out that the responsibility for work-life balance must be shared equally between workers, families, social partners, local and regional authorities and all public and private service providers. Only by ensuring a holistic approach from all sides will it be possible to pursue a socially and economically sustainable environment that puts individuals and their families at the heart of policy-making;

46. highlights the important role of local end regional authorities in designing, implementing and evaluating measures in areas where they often have key competences, such as social and employment policy;

47. calls on the Commission, as a follow-up to the adoption of the European Pillar of Social Rights[1], to put forward a proposal for better worker participation in European businesses, as effective workplace representation is also an important tool in maintaining transparent and predictable working conditions;

48. believes that, while taking account of the requirements of the European works councils directive (2009/38/EC), the scope of European law on works councils should be broadened to cover digitalisation, with a view to strengthening and protecting existing worker representation rights against the backdrop of growing cross-border and transnational business activity and the associated increase in mobile and transnational work;

49. notes that some Member States have well-functioning labour market models with highly autonomous social partners in which employment relationships and working conditions are regulated by collective agreement, based on a balance between different interests as regards conditions. To comply with the legal standards in this Directive it must be possible to continue to regulate issues concerning minimum rights through collective agreements.

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1 CoR opinion on the European Pillar of Social Rights (CoR 3141/2017), October 2017

Brussels, 5 July 2018

The President
of the European Committee of the Regions

Karl-Heinz Lambertz

The Secretary-General
of the European Committee of the Regions

Jiří Buriánek

## III. PROCEDURE

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|---|---|
| **Title** | Transparent and predictable working conditions in the European Union |
| **Reference document** | COM(2017) 797 final |
| **Legal basis** | Article 48 TFEU |
| **Procedural basis** | Rule 41(a) RP |
| **Date of Council/EP referral/Date of Commission letter** | |
| **Date of Bureau/President's decision** | |
| **Commission responsible** | SEDEC |
| **Rapporteur** | Isolde Ries (DE/PES) |
| **Analysis** | 1 March 2018 |
| **Discussed in commission** | 23 April 2018 |
| **Date adopted by commission** | 23 April 2018 |
| **Result of the vote in commission (majority, unanimity)** | majority |
| **Date of adoption in plenary** | 5 July 2018 |
| **Previous Committee opinions** | • CoR opinion on "The posting of workers in the framework of the provision of services" (CDR1185-2012)<br>• Opinion on Frontier workers: Assessment of the situation after twenty years of the internal market: Problems and Perspectives (CDR 246/2013)<br>• Opinion on Labour Mobility and Strengthening of EURES (CDR 1315/2014)<br>• Opinion on a European Platform against Undeclared Work (CDR 3236/2014)<br>• The European Pillar of Social Rights (CDR 2868/2016)<br>• Collaborative economy and online platforms: a shared view of cities and regions (CDR 4163/2016)<br>• Opinion on the Revision of the Posting of Workers Directive (CDR 2881/2016)<br>• Coordination of Social Security Systems (CDR 849/2017)<br>• The European Pillar of Social Rights and Reflection paper on the social dimension of Europe (CDR 3141/2017)<br>• Opinion on Work-life balance for parents and carers (CDR 3138/2017) |
| **Date of Subsidiarity Monitoring consultation** | – |