European Economic and Social Committee

SOC/572
Working conditions directive

OPINION

European Economic and Social Committee

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 – 2017/0355 (COD)]

Rapporteur: **Christian BÄUMLER (DE-II)**
Co-rapporteur: **Vladimíra DRBALOVÁ (CZ-I)**

Consultation	Council of the European Union referral: 10/01/2018 European Parliament referral: 18/01/2018
Legal basis	Article 153(2) of the Treaty on the Functioning of the European Union
Section responsible	Section for Employment, Social Affairs and Citizenship
Adopted in section	25/04/2018
Adopted at plenary	23/05/2018
Plenary session No	535
Outcome of vote (for/against/abstentions)	164/22/9

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) supports the Commission's effort to make working conditions for all workers, particularly those in atypical employment, more transparent and predictable as a concrete step towards implementing the European Pillar of Social Rights.

1.2 The EESC regrets that it was not possible to revise and update the Written Statement Directive (Directive 91/533/EEC) within the social dialogue framework. It points out that the social partners have a specific role in regulating transparent and predictable working conditions through social dialogue and collective bargaining, respecting the diversity among the Member States and national practices.

1.3 The EESC also points out that the REFIT report notes that the existing Directive 91/533/EEC still has clear added value, achieves its purpose, remains an important part of the acquis and continues to be relevant to all interested parties. Shortcomings were found, however, in relation to effectiveness, the personal scope of the directive and its implementation.

1.4 Some of the Member States have addressed the challenges of atypical employment and put in place safeguarding measures through collective agreements, social dialogue or legislation with a view to ensuring fair working conditions and transitions with diverse career paths in labour markets, and the EESC explicitly welcomes this. The Commission should clarify that such types of protection should be upheld, in full respect of the autonomy of the social partners.

1.5 The EESC understands the objectives of the Commission proposal for a directive on transparent and predictable working conditions which should lead to better protection for workers, particularly those in atypical employment. The EESC points out that only a balanced, legally sound, unambiguous and sufficiently reasoned proposal will be able to guarantee the necessary convergence and ensure coherent application in the European labour market of the obligations stemming from the proposed directive.

1.6 The EESC recognises the particular situation of natural persons acting as employers, and micro and small enterprises, which may not have the same resources available to them as medium and larger enterprises when fulfilling their obligations under the proposed directive. The EESC therefore recommends that the European Commission and Member States should provide appropriate support and assistance to such entities, to help them meet these obligations. The use of model letters and templates, as already foreseen by the proposal, is a good example and other practical measures should be explored.

1.7 In order to ensure effectiveness of the rights provided by Union law, the personal scope of the Written Statement Directive should be updated to address labour market developments while at the same time respecting national practices. According to the Commission, the Court of Justice of the European Union has, in its case-law, established criteria for determining the status of a worker which are appropriate for determining the personal scope of application of this directive. The definition of a "worker" is based on these criteria. The Commission should consider issuing

guidelines to assist employers in fulfilling their obligations and raise awareness among workers, thus reducing the risk of litigation.

1.8 The EESC highlights that Member States must be able to determine, under the social dialogue, who falls within the scope of "worker" but that this must be interpreted in the light of the purpose of the directive, which is to "promote more secure and predictable employment while ensuring labour market adaptability and improving living and working conditions". The EESC highlights that domestic workers, seafarers and fishermen should therefore fall within its scope. Working conditions of seafarers are already regulated to a high degree by the European Social Partners' Agreement on the ILO Maritime Labour Convention 2006, appended to the Council Directive 2009/13/EC.

1.9 The EESC points out that the criterion of "being under the direction of another" in the definition of a worker could hinder the inclusion of platform workers. It therefore recommends further clarification so that such workers also benefit from the protection of the directive. The EESC believes, however, that people using platforms who are genuinely self-employed and independent should be excluded from the scope of the directive.

1.10 The EESC recommends that the personal scope of the directive with regard to the definition of an employer should be clarified, as it is currently imprecise.

1.11 The EESC supports the recast version of the obligation to provide workers with information regarding their working conditions when an employment relationship starts or is modified, and the clarification that this must take place at the latest at the beginning of such a relationship or when changes take effect. The EESC acknowledges that there may be justified operational reasons for allowing some limited flexibility in the case of micro and small enterprises, while ensuring that workers are informed of their working conditions as close to the start of the employment relationship as possible.

1.12 The EESC notes that the proposal allows for the social partners to conclude collective agreements which depart from the minimum requirements relating to working conditions. The EESC endorses this provided that the objectives of the directive are met, and that the overall protection of workers is acceptable and is not undermined.

1.13 The EESC believes that on-demand work cannot be maintained as a form of employment without an appropriate reference period and appropriate advance notice. The EESC recommends that employment contracts that provide for on-demand work should guarantee a certain number of hours or corresponding payment.

1.14 The EESC supports the provisions relating to minimum requirements relating to working conditions, notably regarding the length of the probationary period, restrictions on the prohibition of employment in parallel, minimum predictability of work, transitioning to another form of employment where available, and the provision of cost-free training where this is required for the worker to carry out the work. However, the EESC recommends clarification of certain aspects, recommending that responsibility be left up to the national level according to national legal and social dialogue practices.

1.15 The EESC believes that for the effective application of the directive, it is right for workers to be protected from dismissal, or other measures with equivalent effect, because they have invoked their rights under the directive. In such circumstances, it is reasonable that the employer can be required, at the request of a worker, to substantiate the grounds of dismissal in writing.

1.16 The proposal provides for instruments with which to sanction an infringement of the directive's information obligations. The EESC drew attention to this lacuna in a previous opinion and called for it to be rectified. The EESC is of the opinion that sanctions, where they are justified, should correspond with the level of damage suffered by the worker. The EESC welcomes the provision under Article 14(1) giving employers 15 days to complete the missing information.

1.17 The proposal sets out minimum standards for convergence and it is important that workers who currently enjoy better material rights should not fear deterioration in their existing rights when the directive is implemented. The EESC therefore supports the explicit non-regression clause contained in the proposal. However, the EESC recommends that, as well as ensuring that there would be no worsening of the overall level of protection, the directive should also make it more explicit that there should be no worsening of conditions in the individual areas covered by the directive.

2. **Context of the proposal**

2.1 The proposed Directive on transparent and predictable working conditions in the European Union (2017/0355 (COD)) is intended to replace the current Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (Written Statement Directive). It should also complement other existing EU directives.

2.2 The proposal has its legal basis in Article 153(2)(b) of the Treaty on the Functioning of the European Union and draws on a REFIT evaluation of the existing EU law. The REFIT report notes that the Written Statement Directive brings clear added value, achieves its purpose, remains an important part of the *acquis* and continues to be relevant to all interested parties. Shortcomings were found, however, in relation to effectiveness, the personal scope of the directive and its implementation

2.3 The cost of issuing a new or revised written statement is expected to be EUR 18-153 for SMEs and EUR 10-45 for larger companies. Companies would also have one-off costs related to familiarisation with the new directive: an average of EUR 53 for an SME and EUR 39 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.

2.4 Employers anticipate some modest indirect costs (legal advice, revised scheduling systems, HR management time, information for staff etc.). Flexibility will only be lost at the margins (i.e. for the small proportion of employers making extensive use of the most flexible forms of employment).

2.5 On 26 April 2017 and 21 September 2017, 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 TFEU. The views of the social partners were mixed on the need for legislative measures to revise Directive 91/533/EEC. The EESC points out, as it did in a previous opinion, that transparent and predictable working conditions should be negotiated above all by the social partners in the framework of social dialogue[1] and regrets that there was no agreement among the social partners to enter into direct negotiations to conclude an agreement at Union level.

2.6 The Commission points out that the world of work has evolved significantly since the adoption of Directive 91/533/EEC (hereinafter the "Written Statement Directive") on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. 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". Digitalisation, too, has facilitated the creation of new forms of employment.

2.7 The Commission notes in the proposal that 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.

2.8 Even so, the Commission has also acknowledged that these trends have nurtured instability and increasing unpredictability in some working relationships. This is particularly the case for workers in the most insecure situations. Between 4 and 6 million workers are on on-demand and intermittent contracts, many with little indication of when and for how long they will work. Up to one million are subject to exclusivity clauses, preventing them from working for another employer. On the other hand, the Sixth European Working Conditions Survey (2015) found that 80% of workers from the EU 28 were satisfied with their working conditions.

2.9 Some of the Member States have addressed the challenges of atypical employment and put in place safeguarding measures through collective agreements, social dialogue or legislation with a view to ensuring fair working conditions and transitions with diverse career paths in labour markets, and the EESC explicitly welcomes this. The Commission should set out in the recitals that certain forms of protection, e.g. those in Belgium and Sweden, are to be complied with. In Belgium, for instance, the system of supplementary jobs in various sectors is based on the principle that workers already have another main job.

1 OJ C 434, 15.12.2017, p. 30.

3. General comments

3.1 The EESC has also encouraged Member States and the EU, in its opinions on the Pillar of Social Rights[2], to establish and maintain a regulatory framework that fosters adaptability, which is simple, transparent and predictable, which strengthens and preserves workers' rights and the rule of law and through which the EU can promote a stable legal framework for collective bargaining and social dialogue in the implementation of flexicurity. In its first opinion on the Pillar of Social Rights[3], the EESC emphasised that labour market conditions must support new and more diverse career paths. Different forms of job creation and different forms of work are required in working life. This requires providing a suitable employment protection legislation environment to provide a framework for fair working conditions and to stimulate recruitment under all employment contracts.

3.2 The EESC points out that atypical employment can have significant impacts for both individuals and society. Insecure employment could, for example, conflict with starting a family, purchasing a home and other personal projects. It must be remembered that young people, women and people with a migrant background are particularly affected by these forms of employment. The lower pay often associated with atypical employment can in some cases require supplementary social benefits and, in addition, have a negative impact on pension entitlement, as well as the amount.

3.3 The EESC endorses the Commission's aim of ensuring that dynamic innovative labour markets underpinning the EU's competitiveness are framed in a way that offers basic protection to all workers and longer-term productivity gains for employers and enables convergence towards better living and working conditions across the EU. The EESC points out that only a balanced and legally sound, unambiguous and sufficiently reasoned proposal will be able to guarantee the necessary convergence and ensure uniform application in the European labour market of the obligations stemming from the part of employment law being debated.

3.4 The Commission points out that the regulatory system across the EU has become increasingly complex. According to the Commission, this increases the risk of competition based on undercutting social standards, which also has harmful consequences both for employers, who are subject to unsustainable competitive pressure, and for Member States, who forgo tax revenue and social security contributions. The EESC supports the Commission's aim of setting minimum requirements for atypical workers while respecting national legal and social dialogue systems, protecting in particular those workers who are not covered by collective agreements.

3.5 The EESC sees the proposal as one of the Commission's key initiatives 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 2017. The pillar serves as a compass for the renewed upwards convergence in

2 OJ C 125, 21.4.2017, p. 10, OJ C 81, 2.3.2018, p. 145

3 OJ C 125, 21.4.2017, p. 10

social standards amid the changing realities of the world of work. This directive should help to implement the pillar's principles on "Secure and adaptable employment" and "Information about employment conditions and protection in case of dismissals". There are different views on how to implement these principles most effectively. Some consider the Commission proposal to be a considerable step in the right direction, while others think it goes beyond what is needed.

3.6 However, the EESC emphasises that social dialogue and collective bargaining should remain the most important tool to set transparent, predictable and decent working conditions, and the European Commission should be mindful not to interfere in or impede social dialogue and collective bargaining.

4. Specific comments

4.1 Scope and definitions

4.1.1 Under Article 1(2), the minimum rights enshrined in the directive apply to every worker in the Union. In order to ensure effectiveness of the rights provided by Union law, the personal scope of the Written Statement Directive should be updated to address labour market developments while at the same time respecting national practices. According to the Commission, the Court of Justice of the European Union has in its case-law established criteria for determining the status of a worker 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 coherent 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 all come within the scope of this directive.

4.1.2 The EESC points out that the criterion of being under the direction of another person could hinder the inclusion of platform workers. It should therefore be specified in the recitals that algorithms can be binding on workers in the same way as oral or written instructions. Real self-employed people using platforms should be excluded from the scope of the directive.

4.1.3 The EESC highlights that Member States and social partners must be able to determine under the social dialogue who falls into the scope of "worker" but this must be interpreted in the light of the general objective of the directive, which is to improve working conditions by promoting more secure and predictable employment while ensuring labour market adaptability. The CJEU has highlighted (see for example Case C-393/10, O'Brien) that Member States may not apply rules which are liable to jeopardise the achievement of the objectives pursued by a directive and, therefore, deprive it of its effectiveness.

4.1.4 The EESC fears that the actual definition of an employer in the proposal could lead to confusion and complexity. By defining an employer as "one or more natural or legal person(s) who is or are directly or indirectly party to an employment relationship with a worker", the proposal introduces a new concept for defining employers. Usually there is only one employer for a given employment relationship. In this regard it is necessary to refer to the applicable national legislation.

4.1.5 The EESC points out that the exemption provided in Article 1(6) could lead to unjustifiable unequal treatment of domestic workers when it comes to access to better kinds of work, further training and the exercise of their rights. This difference in treatment is unsound and actually prohibited, given that several EU countries have now ratified – and are therefore bound by – ILO Convention No 189 on the working conditions of domestic workers.

4.1.6 The EESC welcomes the fact that Article 1(7) of the directive should be applicable to seafarers and fishermen. With respect to seafarers' working conditions, regulated by the Council Directive 2009/13/EC, the EESC is of the opinion that consideration should be given to the compatibility of the proposed directive with the specificities of the maritime profession.

4.2 Obligation to provide information

4.2.1 The EESC can support the fact that under Article 4(1) of the proposal, workers are to be informed of important working conditions at the start of the employment relationship. This is the only way of making sure that both sides are aware of their rights and obligations when they enter into the employment relationship. Providing information at a later stage works solely to the detriment of employees and in the case of short-term work they lose entirely the protection to which they are entitled. Nevertheless, the EESC recognises that there may be exceptional circumstances, which may prevent micro and small businesses from being able to provide the information on the first day. The EESC recommends that a brief extension of the timing for the provision of the information could be provided for micro and small enterprises. The EESC also recognises that an expanded package of information for businesses, particularly small and micro-enterprises, could be burdensome. The EESC therefore believes that assistance and support should be provided to natural persons, small and micro-enterprises, among others by associations of SMEs, to help them to fulfil their obligations under the directive.

4.2.2 The proposal provides in Article 4(1) that the document containing the information on the employment relationship may be communicated electronically, provided it is easily accessible by the worker. The EESC believes, however, that this is important to ensure that notification actually takes place. It recommends that employers and workers should have the scope to agree on the method of transmission of the document and that, in any event, the notification is to be considered as completed only once the worker has acknowledged receipt.

4.2.3 The EESC agrees that information about changes to basic working conditions must be given at the earliest opportunity and at the latest when the changes come into effect. This plugs a major gap in the current Written Statement Directive, under which changes only have to be notified in writing a month after taking effect (Article 5(1)). To avoid excessive administrative burdens it should be stipulated that changes resulting from modifications of prevailing legal and administrative requirements or from collective agreements do not have to be notified individually by a company, since in many Member States such changes are communicated by legislators and social partners.

4.2.4 Article 6(1) largely corresponds to the existing provisions (Article 4(1) in the Written Statement Directive). The EESC notes the more detailed information (now in (c)) on benefits in kind and cash benefits.

4.2.5 The EESC welcomes the obligation in Article 6(2) to give posted workers more information. It recommends that it should be made clear that these arrangements build on existing ones – in other words, that this information is to be provided in addition to that under Articles 6(1) and 3(2). It is not clear when the revised Directive 96/71/EC will come into force; however the EESC points out that the provisions of this directive must be consistent with the final agreement on the revision of the directive on posting of workers.

4.2.6 The EESC notes that 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. This is because the reference assumes that every Member State has complied fully with its obligation in the enforcement directive and that the posted workers can understand the information in terms of both substance and language. Given that many countries, Germany among them, have failed to satisfactorily meet their obligation under Article 5 of Directive 2014/67/EC despite expiry of the implementation period, the reference serves no purpose, if homepages provide only very general information and not in the relevant languages.

4.2.7 The EESC points out that merely referring to the provisions in force, as provided for in Article 6(3), is not enough to satisfy the requirements of properly informing foreign workers if those provisions are not accessible in a language they can understand. Especially when it comes to the remuneration they can expect abroad, foreign workers must be informed directly and not referred to provisions they cannot understand.

4.2.8 Article 6(4) creates an exemption from the information obligation for foreign assignments that do not exceed four consecutive weeks. The EESC is concerned that this could create a loophole that makes it possible to circumvent the information requirements. It recommends an evaluation of this exemption in due course.

4.3 Minimum requirements relating to working conditions

4.3.1 The EESC supports the objective of the Commission that the provisions of Article 7(1) should serve to introduce uniform minimum standards on the length of the probationary period. This provision, like the exemption in Article 7(2), is in the interest of both employers and workers. 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. The EESC points out that Article 7(2) would allow the Member States to provide for longer probationary periods where justified by the nature of the employment relationship, which could be the case for example in the public administration of certain Member States or for jobs requiring exceptional skills.

4.3.2 The EESC supports the provision in Article 8(1) that employers must not prohibit workers from taking up employment with other employers outside the time spent working for them, providing this remains within the limits set out in the Working Time Directive which is intended to protect workers' health and safety. However, the EESC points out that such a broad right for parallel employment should respect the national rules, practices and traditions of social dialogue and social partnerships in the different Member States. Such a broad right may be problematic in particular regarding key personnel for the employer, as such employees cannot be available for several employers at the same time. Regarding the Working Time Directive, there are also concerns that employers might be responsible for monitoring the working time of persons in parallel employment. The EESC recommends clarifying that the employer is not responsible for monitoring working time in another employment relationship.

4.3.3 According to Article 8(2), employers may 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. In recital 20 the Commission refers to specific categories of employers. The employers can in principle support this Article 8(2), but consider that limiting restrictions for working for specific categories of employers seems to not allow necessary restrictions for key personnel in particular, no matter which category of employer they would like to work for. However, the trade unions oppose this broad exemption as it would give employers the unilateral right to lay down incompatibility criteria limiting parallel employment. In the event that an employer may have legitimate reasons for such restrictions, these must be capable of objective justification, and it should therefore be the Member State legislators and courts that are principally responsible for balancing the conflicting interests of the parties.

4.3.4 The EESC shares the objective of improving the predictability of work on demand envisaged by the proposal. This predictability can be improved through restrictions of actual working times to a reference framework established in advance and through the early notification of such times, as provided for in Article 9. Workers whose work schedule is mostly variable should benefit from a minimum predictability of work where the work schedule mainly either directly – for instance by allocating work assignments – or indirectly – for instance by requiring the worker to respond to clients' requests – requires workers to be flexible. Nevertheless a clarification will be needed as to what is understood by a sufficiently reasonable period of notice for the employee to be told about work over the following days and who should make the decision on what notice periods are reasonable for which branches of industry. Arrangements differ between sectors.

4.3.5 The EESC points out that the directive does not provide any qualitative guidance to Member States on the reference framework and the advance notice. It is not impossible that even a broadly conceived reference period and notice periods would still be in conformity with the directive even though they did not improve predictability of work for workers. In addition, reference periods could be imposed unilaterally by the employer, without workers having the same right, which perpetuates the existing imbalance.

4.3.6 The EESC recognises the fact that on-demand work brings flexibility that limits the predictability of an employee's everyday life. Fluctuating and unreliable income could be serious problems that on-demand work causes for staff. The EESC believes that on-demand

work cannot be maintained as a form of employment without setting an appropriate reference period and appropriate advance notice for the worker. The EESC recommends that employment contracts that provide for on-demand work must guarantee a certain number of hours or corresponding payment.

4.3.7 According to Article 10(1), after a period of employment of six months workers must be able to ask their employers for a form of employment with more predictable and secure working conditions. The EESC welcomes the fact that this arrangement is to cover all categories of workers in non-standard or insecure arrangements. It is concerned that there is no provision for an enforceable right to move to other forms of employment, where this is available. As such, the right to submit a request is in itself no meaningful improvement in the legal situation of employees, since they can already express their wish for upgrading, an open-ended contract and so on. However, policy measures to support that aim should be efficient and proportionate and should not place unnecessary administrative burdens on companies.

4.3.8 The EESC believes that the requirements in Article 10(2) regarding the employer's written answer must be amplified. Employers should provide objective business reasons for the refusal of the request so that where the worker believes that the application has been refused on other grounds, the refusal can be subject to independent review by the courts or according to national practices. This is the only way to ensure that employers seriously consider the workers' requests, rather than just providing any reply to comply with a formality.

4.3.9 The EESC notes the fact that the Commission acknowledges the specific situation of natural persons acting as employers, and small and micro enterprises in the derogation from the written justification requirements provided for in Article 10(2). However, it points out that the current formulation would cover all companies with 249 or fewer staff and an annual turnover of up to EUR 50 million, which is 99% of all companies in the EU. The scope of this derogation should therefore be reconsidered.

4.3.10 The EESC thinks the directive should open up real opportunities for workers in non-standard jobs to move to more standard terms of employment appropriate to their qualifications. This requires minimum rights for temporary workers to be moved into open-ended employment and to upgrade from part-time to full-time work, where there are free places in the company and the worker has the necessary skills or qualifications.

4.3.11 The EESC welcomes the provision in Article 11, that where employers are required by Union or national legislation or relevant collective agreements to provide training to workers to carry out the work they are employed for, the costs of such training should be cost-free to the worker. As regards a possible "reimbursement clause" in the event of training going beyond legal requirements which leads to a higher qualification and where the employee resigns at an early stage after the training, the EESC stresses that such clauses must be well founded in each case and where appropriate negotiated by agreement between the social partners and should in any case comply with the principle of proportionality and be regressive in effect (i.e. decreasing repayment risk over the course of employment).

4.3.12 The EESC welcomes the fact that Article 12 provides for the minimum standards in Articles 7 to 11 to be modified under collective agreements on condition that workers' rights remain at an appropriate level in those agreements and that overall protection of workers is maintained. We would point out that transparent and predictable working conditions should be negotiated above all by the social partners in the framework of social dialogue.

4.4 Other provisions

4.4.1 The EESC highlights the fact that Article 13 requires Member States to ensure compliance with this directive and to declare null and void or to amend provisions contrary to it in collective and individual agreements in line with the provisions of the directive. The consequences of introducing annulment and the corresponding conformity with the directive in Member States should be carefully analysed especially in the light of Article 12. The role of the social partners in ensuring compliance should be encouraged and respected.

4.4.2 Article 14 of the proposal provides for instruments with which to sanction an infringement of the directive's information obligations. The EESC drew attention to this lacuna in a previous opinion and called for it to be rectified[4]. The EESC is of the opinion that sanctions, where they are justified, should correspond with the level of damage suffered by an employee. It could avoid litigation for even small technical breaches of the directive. The EESC welcomes the provision under Article 14(2) giving employers 15 days to complete the missing information.

4.4.3 The EESC welcomes the requirement imposed upon Member States in Article 15 to ensure that workers have access to effective and impartial dispute resolution and a right to redress, including adequate compensation, in the event of infringements of their rights arising from this directive.

4.4.4 The EESC welcomes the arrangements in Article 16 giving tangible form to the general prohibition on disciplinary treatment. These arrangements, which Member States would implement though an explicit prohibition of discrimination, serve as a signal to legal practitioners and as such operate as a preventive measure.

4.4.5 The EESC notes the protection against dismissal provided for in Article 17 and the related burden of proof. Article 17(1) stipulates that Member States must prohibit dismissal (or measures with equivalent effect) or preparations for dismissal on the grounds that workers exercised the rights provided for in the directive. In combination with Article 17(2), by which workers who think they have been dismissed for exercising rights under this directive may request the employer to provide duly substantiated grounds, this is a useful tool for the exercising of rights arising from this directive. The approach in Article 17(3) – that it is for the employer to prove that the dismissal was based on grounds other than discrimination of the worker – goes in the right direction, but there are some concerns regarding the legal basis which should be clarified. It should be made clear that dismissals or similar measures are invalid because workers have invoked their rights under the directive.

4 OJ C 125, 21.4.2017, p. 10.

4.4.6 The EESC supports the obligations on Member States set out in Article 18 to lay down effective, proportionate and dissuasive penalties for infringements of the national implementing provisions.

4.4.7 The EESC welcomes the express provisions in Article 19 prohibiting the lowering of standards in this legislation, which are already in the existing Written Statement Directive (Article 7), which is indispensable where substantive rights standards are higher. Paragraph 1, however, needs to be clarified to ensure that not only may the overall level of protection not be lowered, but that – specifically related to the individual areas covered by the directive – no deterioration is allowed in the areas it governs as a result of its implementation.

4.4.8 The EESC is pleased that, under Article 21, the rights and obligations arising from this directive are also to be extended to existing working conditions. This is both right and necessary, given the improvement to the legal situation the directive seeks to achieve. It acknowledges, however, that it could incur costs and some additional burdens for companies. Measures should be taken to assist natural persons acting as employers and companies, particularly small and micro enterprises, in meeting their obligations under the directive.

Brussels, 23 May 2018

Luca JAHIER
The president of the European Economic and Social Committee