
Proposal for a Directive on transparent & predictable working conditions COM(2017) 797 final

Resolution of the Employment and Social Affairs Commission

The Employment and Social Affairs Commission of the European Confederation of Independent Trade Unions (CESI) considers that the European Commission's legislative proposal for a Directive on transparent and predictable working conditions of December 21 (a revision of the current Written statement directive) may be well-intended but would, if adopted without changes, be mostly ineffective due to vague terminology and ambiguous wording.

On a positive note, the **name of the directive** was changed to reflect a potentially more ambitious nature of the text, even if a whole new broad Framework directive on decent work (as opposed to an upgraded ex-Written Statement Directive) would have been more appropriate to ensure basic labour rights for all.

The **scope of the directive** specifically includes any *“natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration”* (article 2(1)a). This is an important step to subject all persons in de facto dependent work relationships -including those in bogus self-employment, paid internships and domestic work as well as new forms of employment- to core rights.

However, to be effective and bring real improvements to workers, the Directive should address the following:

- The article 7(2) allows an **extension of the maximum length of the probationary period of six months** if it is justified by *“the nature of the employment”* or *“the interest of the worker”*. The first phrase is not clear enough; there should be precise and restrictive specifications about (1) the maximum length of an extension and (2) exact conditions when the *“nature of employment”* justifies an extension. In terms of the second phrase it is unclear when it could possibly be in the interest of a worker to extend a probationary period. This phrase should be deleted altogether.
- Article 8(2) contains a measure seeking to **allow employers to exercise prohibition over their employees of taking up an employment in parallel ('exclusivity clauses')** if there are *“legitimate reasons”* for this *“such as the protection of business secrets or the avoidance of conflicts of interests”*.

The term “*such as*” should be avoided. Instead, the directive should include a positive list with clearly defined exceptions.

- Article 9(b) on **minimum predictability of work** proposes that “*where a worker’s work schedule is entirely or mostly variable and entirely or mostly determined by the employer*”, he/she could be required to work by the employer not only within predetermined reference hours and reference days but also if he/she is informed by their employer of a work assignment “*a reasonable period in advance*”. CESI notes that the directive’s main objective, namely the predictability of work, is threatened as the wording chosen can be interpreted in a very broad manner. “*Reasonable period*” needs to be defined (in a restrictive manner) to avoid abuses.
- The proposal contains, in article 10, a **measure to guarantee workers with at least six months’ of seniority with the same employer the right to request a transition into a more stable and secure form of employment**. This article must go further than a solely right for request. (No worker needs a legal provision to be able to ask for something!) Given that workers are usually in a weaker bargaining position than their employer, a mere right to request which can be simply turned down by employers, is ineffective. Few employees will dare making use of the theoretical possibilities to launch formal appeal procedures in which the trustful employee-employer relationship could be destroyed. More than a right to request is needed especially if repeated fixed-term contracts, an increasingly popular phenomenon in labour markets, are to be fought effectively.
- Article 22 proposes that the European Commission shall **review the effectiveness of the directive eight years after its entry into force**. Following expected delays related to the negotiation and entry and into force of the directive, this would likely mean an evaluation to be carried out in 2029, 11 years from now. Considering the rapid evolution of work organisation and emergence of new forms of employment, induced by globalisation, digitalisation and increasing labour mobility and causing quick socioeconomic changes, a sooner review would be appropriate.