Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union

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on transparent and predictable working conditions in the European Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (b) of Article 153(2), in conjunction with point (b) of Article 153(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) Article 31 of the Charter of Fundamental Rights of the European Union provides that every worker has the right to working conditions which respect his or her health, safety and dignity, to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

(2) Principle No 5 of the European Pillar of Social Rights, proclaimed at Gothenburg on 17 November 2017, provides that, regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training, and that the transition towards open-ended forms of employment is to be fostered; that, in accordance with legislation and collective agreements, the necessary flexibility for employers to adapt swiftly to changes in the economic context is to be ensured; that innovative forms of work that ensure quality working conditions are to be fostered, that entrepreneurship and self-employment are to be encouraged and that occupational mobility is to be facilitated; and that employment relationships that lead to precarious working conditions are to be prevented, including by prohibiting abuse of atypical contracts, and that any probationary period is to be of a reasonable duration.

(3) Principle No 7 of the European Pillar of Social Rights provides that workers have the right to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship, including any probationary period; that prior to any dismissal they are entitled to be informed of the reasons and given a reasonable period of notice; and that they have the right to access to effective and

impartial dispute resolution and, in the case of unjustified dismissal, a right to redress, including adequate compensation.

(4) Since the adoption of Council Directive 91/533/EEC[(4)], labour markets have undergone far-reaching changes due to demographic developments and digitalisation leading to the creation of new forms of employment, which have enhanced innovation, job creation and labour market growth. Some new forms of employment vary significantly from traditional employment relationships with regard to predictability, creating uncertainty with regard to the applicable rights and the social protection of the workers concerned. In this evolving world of work, there is therefore an increased need for workers to be fully informed about their essential working conditions, which should occur in a timely manner and in written form to which workers have easy access. In order adequately to frame the development of new forms of employment, workers in the Union should also be provided with a number of new minimum rights aiming to promote security and predictability in employment relationships while achieving upward convergence across Member States and preserving labour market adaptability.

(5) Pursuant to Directive 91/533/EEC, the majority of workers in the Union have the right to receive written information about their working conditions. Directive 91/533/EEC does not however apply to all workers in the Union. Moreover, gaps in protection have emerged for new forms of employment created as a result of labour market developments since 1991.

(6) Minimum requirements relating to information on the essential aspects of the employment relationship and relating to working conditions that apply to every worker should therefore be established at Union level in order to guarantee all workers in the Union an adequate degree of transparency and predictability as regards their working conditions, while maintaining reasonable flexibility of non-standard employment, thus preserving its benefits to workers and employers.

(7) The Commission has undertaken a two-phase consultation with the social partners, in accordance with Article 154 of the Treaty on the Functioning of the European Union, on the improvement of the scope and effectiveness of Directive 91/533/EEC and the broadening of its objectives in order to establish new rights for workers. This did not result in an agreement among the social partners to enter into negotiations on those matters. However, as confirmed by the outcome of the open public consultations that sought the views of various stakeholders and citizens, it is important to take action at Union level in this area by modernising and adapting the current legal framework to new developments.

(8) In its case law, the Court of Justice of the European Union (Court of Justice) has established criteria for determining the status of a worker[(5)]. The interpretation of the Court of Justice of those criteria should be taken into account in the implementation of this Directive. Provided that they fulfil those criteria, domestic workers, on-demand workers, intermittent workers, voucher based-workers, platform workers, trainees and apprentices could fall within the scope of this Directive. Genuinely self-employed persons should not fall within the scope of this Directive since they do not fulfil those criteria. The abuse of the status of self-employed persons, as defined

in national law, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. Bogus self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations. Such persons should fall within the scope of this Directive. The determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of the work and not by the parties' description of the relationship.

(9) It should be possible for Member States to provide, where justified on objective grounds, for certain provisions of this Directive not to apply to certain categories of civil servants, public emergency services, the armed forces, police authorities, judges, prosecutors, investigators or other law enforcement services, given the specific nature of the duties that they are called on to perform or of their employment conditions.

(10) The requirements laid down in this Directive with regard to the following matters should not apply to seafarers or sea fishermen, given the specificities of their employment conditions: parallel employment where incompatible with the work performed on board ships or fishing vessels, minimum predictability of work, the sending of workers to another Member State or to a third country, transition to another form of employment, and providing information on the identity of the social security institutions receiving the social contributions. For the purposes of this Directive, seafarers and sea fishermen as defined, respectively, in Council Directives 2009/13/EC[(6)] and (EU) 2017/159[(7)] should be considered to be working in the Union when they work on board ships or fishing vessels registered in a Member State or flying the flag of a Member State.

(11) In view of the increasing number of workers excluded from the scope of Directive 91/533/EEC on the basis of exclusions made by Member States under Article 1 of that directive, it is necessary to replace those exclusions with a possibility for Member States not to apply the provisions of this Directive to an employment relationship with predetermined and actual working hours that amount to an average of three hours per week or less in a reference period of four consecutive weeks. The calculation of those hours should include all time actually worked for an employer, such as overtime or work supplementary to that guaranteed or anticipated in the employment contract or employment relationship. From the moment when a worker crosses that threshold, the provisions of this Directive apply to him or her, regardless of the number of working hours that the worker works subsequently or the number of working hours provided for in the employment contract.

(12) Workers who have no guaranteed working time, including those on zero-hour and some on-demand contracts, are in a particularly vulnerable situation. Therefore, the provisions of this Directive should apply to them regardless of the number of hours they actually work.

(13) Several different natural or legal persons or other entities may in practice assume the functions and responsibilities of an employer. Member States should remain free to determine more precisely the persons who are considered to be wholly or partly responsible for the execution of the obligations that this Directive lays down for

employers, as long as all those obligations are fulfilled. Member States should also be able to decide that some or all of those obligations are to be assigned to a natural or legal person who is not party to the employment relationship.

(14) Member States should be able to establish specific rules to exclude individuals acting as employers for domestic workers in the household from the requirements laid down in this Directive, with regard to the following matters: to consider and respond to requests for different types of employment, to provide mandatory training that is free of cost, and to provide for redress mechanisms that are based on favourable presumptions in the case of information that is missing from the documentation that is to be provided to the worker under this Directive.

(15) Directive 91/533/EEC introduced a list of essential aspects of the employment contract or employment relationship of which workers are to be informed in writing. It is necessary to adapt that list, which Member States can enlarge, in order to take account of developments in the labour market, in particular the growth of non-standard forms of employment.

(16) Where the worker has no fixed or main place of work, he or she should receive information about arrangements, if any, for travel between the workplaces.

(17) It should be possible for information on the training entitlement provided by the employer to take the form of information that includes the number of training days, if any, to which the worker is entitled per year, and information about the employer's general training policy.

(18) It should be possible for information on the procedure to be observed by the employer and the worker if their employment relationship is terminated to include the deadline for bringing an action contesting dismissal.

(19) Information on working time should be consistent with Directive 2003/88/EC of the European Parliament and of the Council[(8)], and should include information on breaks, daily and weekly rest periods and the amount of paid leave, thereby ensuring the protection of the safety and health of workers.

(20) Information on remuneration to be provided should include all elements of the remuneration indicated separately, including, if applicable, contributions in cash or kind, overtime payments, bonuses and other entitlements, directly or indirectly received by the worker in respect of his or her work. The provision of such information should be without prejudice to the freedom for employers to provide for additional elements of remuneration such as one-off payments. The fact that elements of remuneration due by law or collective agreement have not been included in that information should not constitute a reason for not providing them to the worker.

(21) If it is not possible to indicate a fixed work schedule because of the nature of the employment, such as in the case of an on-demand contract, employers should inform workers how their working time is to be established, including the time slots in which they may be called to work and the minimum notice period that they are to receive before the start of a work assignment.

(22) Information on social security systems should include information on the identity of the social security institutions receiving the social security contributions, where relevant, with regard to sickness, maternity, paternity and parental benefits, benefits for accidents at work and occupational diseases, and old-age, invalidity, survivors', unemployment, pre-retirement and family benefits. Employers should not be required to provide that information where the worker chooses the social security institution. Information on the social security protection provided by the employer should include, where relevant, the fact of coverage by supplementary pension schemes within the meaning of Directive 2014/50/EU of the European Parliament and of the Council[(9)] and Council Directive 98/49/EC[(10)].

(23) Workers should have the right to be informed about their rights and obligations resulting from the employment relationship in writing at the start of employment. The basic information should therefore reach them as soon as possible and at the latest within a calendar week from their first working day. The remaining information should reach them within one month from their first working day. The first working day should be understood to be the actual start of performance of work by the worker in the employment relationship. Member States should aim to have the relevant information on the employment relationship provided by the employers before the end of the initially agreed duration of the contract.

(24) In light of the increasing use of digital communication tools, information that is to be provided in writing under this Directive can be provided by electronic means.

(25) In order to help employers to provide timely information, Member States should be able to provide templates at national level including relevant and sufficiently comprehensive information on the legal framework applicable. Those templates could be further developed at sectoral or local level, by national authorities and the social partners. The Commission will support Member States in developing templates and models and make them widely available, as appropriate.

(26) Workers sent abroad should receive additional information specific to their situation. For successive work assignments in several Member States or third countries, it should be possible for the information for several assignments to be collated before the first departure and subsequently modified in the case of any changes. Workers who qualify as posted workers under Directive 96/71/EC of the European Parliament and of the Council[(11)] should also be notified of the single official national website developed by the host Member State where they are able to find the relevant information on the working conditions applying to their situation. Unless Member States provide otherwise, those obligations apply if the duration of the work period abroad is longer than four consecutive weeks.

(27) Probationary periods allow the parties to the employment relationship to verify that the workers and the positions for which they were engaged are compatible while providing workers with accompanying support. An entry into the labour market or a 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 a reasonable duration.