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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Draft DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on transparent and predictable working conditions in the European Union **(first reading)** - Adoption of the legislative act - Statements

Statement by the Commission

In accordance with Article 23 of the Directive, the Commission will review the application of this Directive 8 years after the directive entered into force, with a view to propose, where appropriate, the necessary amendments. The Commission undertakes in its report to pay particular attention to the application of Articles 1 and 14 by the Member States. The Commission will also verify compliance with Article 14 when assessing whether Member States have fully and correctly transposed the Directive into their national legal systems.

Statement by Germany, supported by Hungary

Die Bundesrepublik Deutschland ("Deutschland") erklärt zum Anwendungsbereich der Richtlinie über transparente und verlässliche Arbeitsbedingungen in der Europäischen Union („Richtlinie"):

Für den Anwendungsbereich der Richtlinie ist die Definition des Arbeitsverhältnisses bzw. Arbeitsvertrages entscheidend.

Deutschland hat sich gemeinsam mit etlichen anderen Mitgliedstaaten während der Verhandlungen dafür eingesetzt, dass hierzu auf das nationale Recht der Mitgliedstaaten verwiesen wird. Die Richtlinie berührt den Kernbereich des Individualarbeitsrechts. Hier gibt es in den Mitgliedstaaten traditionell gewachsene Grundstrukturen, zu denen insbesondere die Definition des Arbeitsverhältnisses, auch in Abgrenzung zu anderen Rechtsverhältnissen, zählt.

Ein Verweis auf das nationale Recht findet sich nun in Artikel 1 Absatz 2 der Richtlinie. Hieraus ergibt sich, dass in erster Linie die Mitgliedstaaten das Arbeitsverhältnis und damit den Anwendungsbereich der Richtlinie entsprechend ihren jeweiligen nationalen Regelungen definieren.

Der Hinweis auf die Rechtsprechung des Europäischen Gerichtshofs (EuGH) in Artikel 1 Absatz 2 der Richtlinie verweist aus Sicht Deutschlands auf dessen Rechtsprechung zur Sicherstellung der Wirksamkeit von Richtlinien. Nach dieser Rechtsprechung definieren in erster Linie die Mitgliedstaaten das Arbeitsverhältnis, wenn die betreffende Richtlinie auf das nationale Recht verweist. Dieses Ermessen ist dadurch begrenzt, dass die Mitgliedstaaten bestimmte Personalkategorien nicht willkürlich ausnehmen dürfen. Dies prüft der EuGH in jedem Einzelfall gesondert anhand des Zwecks der jeweiligen Richtlinie.

Der Hinweis in Artikel 1 Absatz 2 der Richtlinie führt nicht dazu, dass der Begriff des Arbeitsverhältnisses unionsweit einheitlich auszulegen ist. Anderenfalls würde der Verweis auf das nationale Recht ins Leere laufen. Dies ergibt sich auch daraus, dass die Gewährleistung einer einheitlichen Implementierung aus dem entsprechenden Erwägungsgrund gestrichen wurde.

Statement by Estonia

Proposal for a directive on transparent and predictable working conditions lays down new aspects for the protection of dismissal from work and burden of proof for employers. While Estonia agrees with the necessity and importance of providing protection from dismissal for workers, we also believe that there is a strong need to enable enough flexibility for the Member States, allowing them, when transposing the Directive, to take into account the different systems and practices of the Member States, especially the fact if their systems provide more protection to workers.

Estonian national legislation already fulfils or exceeds the level of protection required by the Directive.

Estonian legislation recognizes only limited grounds for dismissal, stated by law. The employer has the obligation to justify the cancellation of the employment contract and also during the labour dispute. The employer has to prove that grounds for dismissal were correct and justified.

Estonia strongly opposes the idea of considering employer in every case to act by mala fide, abusing the limits of the labour law. This derives from paragraphs 3 to 6 of Article 18, which assume that the employer has disregarded the restrictions while dismissing the employee. Estonian labour law is based on a different assumption, providing more protection and a more positive approach.

Estonia supports the adoption of the Directive. However, Estonia does not agree with the taken approach on Article 18 concerning the protection from dismissal and burden of proof. We consider that the protection required by the Directive is fulfilled in Estonia, based on a different dismissal system. Specificities regarding the dismissal should be left for the Member States to decide and regulate.

Statement by the Czech Republic

The definition of an employment relationship or employment contract is crucial to the scope of the Directive. The Czech Republic, together with a number of other Member States, advocated during the negotiations that reference be made to national law of the Member States for this purpose. The Directive affects the core area of individual labour law. In the individual Member States the basic structures in this area have historical roots, including in particular how employment relationships are defined and differentiated from other legal relationships.

A reference to national law can now be found in Article 1 (2) of the Directive. From this it follows that Member States first and foremost define an employment relationship, and thus the scope of the Directive, in accordance with their respective national rules.

From the point of view of the Czech Republic, the reference the Court of Justice of the European Union (CJEU) in Article 1 (2) of the Directive refers to its case law on ensuring the effectiveness of directives. According to this case law, it is primarily Member States that are responsible for defining employment relationships where the directive in question refers to national law. This discretion is limited by the fact that Member States are not permitted to arbitrarily exempt certain categories of personnel. This is reviewed by the CJEU in each individual case on the basis of the purpose of the respective directive.

The reference in Article 1 (2) of the Directive does not imply that the concept of employment relationship is to be interpreted in a uniform manner across the Union. Otherwise, the reference to national law would be meaningless. This also follows from the fact that the assumption of uniform implementation has been deleted from the corresponding recital 8.