EUROPEAN
COMMISSION

Brussels, 21.12.2017
SWD(2017) 478 final

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the 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} - {SWD(2017) 479 final}

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1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

Protecting workers' rights and improving working conditions has been at the heart of the European project since its beginning. The social dimension has developed alongside the deepening of the single market, to ensure a level playing field for business and to promote concrete improvements for millions of workers across all Member States.

In recent years the EU labour market has undergone deep transformations. The financial and economic crisis has exposed weaknesses in social protection systems, whereas globalisation has affected production models and unprecedented technological development has brought new opportunities and demands for skills and for flexible working arrangements. There is a growing diversity of forms of work, which has created new jobs, but has also led to a growing precariousness and gaps in protection.

While economic and financial recovery was the immediate priority at the height of the crisis, this Commission has put social dimension once again in the very centre of its political agenda. As President Juncker has declared, '*Building a more inclusive and fairer Union is a key priority for this European Commission*.'[1] In the same vein, the Commission underlined in its reflection paper on "Harnessing Globalisation"[2] the importance of addressing the impact of globalisation through strong social policies at EU and national levels to reinforce the resilience of citizens and workers.

In this context, through the initiative the European Pillar of Social Rights ('the Pillar'), the Commission launched a debate whether the EU social policy framework is still sufficient to maintain the EU's high social standards. The extensive public consultation on the Pillar[3] in 2016 showed that while the EU acquis is indeed comprehensive, there are gaps linked to developments on the labour market that need to be addressed in order for the acquis to retain its relevance. This was also emphasised in the European Parliament's Resolution of January 2017 on the Pillar, and more recently in its Resolution of July 2017 on working conditions and precarious employment.[4] The Parliament called to extend existing minimum standards to new kinds of employment relationships, improve enforcement of EU law, increase legal certainty across the single market, and prevent discrimination by complementing existing EU law to ensure for every worker a core set of enforceable rights, regardless of the type of contract or employment relationship.[5]

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[1] See Political Guidelines for the next European Commission, "A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change", 15 July 2014.

[2] https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-globalisation_en.pdf

[3] SWD(2017)206 Report of the public consultation accompanying the document establishing a European Pillar of Social Rights

[4] P8-TA(2017)0010 of 19.01.2017 and P8-TA(2017)0290 of 04.07.2017.

[5] European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights

On 17 November 2017 the Council, the European Parliament and the Commission proclaimed the European Pillar of Social Rights, setting out a number of key principles and rights to support fair and well-functioning labour markets and welfare systems. The Principles of the Pillar explicitly address the challenges related to new forms of employment and adequate working conditions in atypical forms of employment, notably 'Secure and flexible employment' (Principle 5) and 'Information about employment conditions and protection in case of dismissals' (Principle 7).

The possible revision of Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship ('Written Statement Directive'), is one of the concrete initiatives announced by the Commission in April 2017 when presenting the Pillar. Other initiatives, closely related to and complementary to this one, include a legislative proposal on work-life balance of parents and carers, a social partners' consultation on access to social protection, and an interpretative communication on working time.

The Written Statement Directive, adopted on 14 October 1991, gives employees the right to be notified in writing of the essential aspects of their employment relationship when it starts or within a limited time thereafter (two months maximum). Revising the Directive could contribute to the Pillar principles by improving workers' and employers' clarity on their contractual relationship and by ensuring this protection is extended to all workers, irrespective of the type of employment relationship, including those in new and non-standard forms of work. The Directive's effectiveness could be enhanced by following up on the conclusions of its recent evaluation conducted in the framework of the European Commission's Regulatory Fitness and Performance programme (REFIT).[6,7] Furthermore, by defining a set of minimum rights reflecting the challenges of the new labour market reality, such a revision could support upward convergence towards equal access to a number of new rights for all workers, in particular those in precarious employment relationships.

These objectives should be addressed without obstructing the development of new forms of work. Labour market innovation is a powerful engine of job creation and these new forms of work can offer opportunities for flexible working arrangements and for the integration in the labour market of people who might have otherwise been excluded. If a set of minimum fair working conditions were ensured across the EU and across all forms of contracts, this would set a framework within which new forms of work could further

[6]https://ec.europa.eu/info/law/law-making-process/overview-law-making-process/evaluating-and-improving-existing-laws/reducing-burdens-and-simplifying-law/refit-making-eu-law-simpler-and-less-costly_en

[7] REFIT Evaluation of the 'Written Statement Directive' (Directive 91/533/EEC), SWD(2017) 205 final, of 26.04.2017; http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=202

develop. This framework could offer fairer protection to workers, a clearer reference framework for national legislators and courts, and a better level playing field for business within the internal market, limiting incentives for regulatory arbitrage.

To achieve this goal, between 26 April and 23 June 2017 the Commission conducted a first phase consultation of the European social partners on the possible direction of Union action[8], in accordance with Article 154 TFEU, followed by a second phase between 21 September and 3 November 2017.[9] The social partners decided not to launch the negotiation foreseen in Article 155 TFEU with a view to reaching an agreement on the matter. It now falls to the Commission to make a proposal.

This Impact Assessment therefore presents different policy measures that the Commission is considering in order to improve the effectiveness of the Written Statement Directive and enhance the protection of workers, notably those in new and non-standard forms of employment. It analyses possible legal, social and economic impacts of considered policy options and compares them in terms of effectiveness, efficiency and coherence in line with the Commission's Better Regulation framework.

2. PROBLEM DEFINITION

2.1 What are the problems?

While flexibility on the labour market is necessary, there exists a risk of insufficient protection of workers, including those in new and non-standard forms of employment.

The world of work evolved significantly since the time of the adoption of **Directive 91/533/EEC**. The last 25 years brought about a growing flexibilisation of the labour market. Demographic changes resulted in a greater diversity of the working population and digitalisation facilitated the creation of new forms of work.

The recent evaluation[10] of the Written Statement Directive has shown that while the Directive remains fundamentally relevant, the labour market changes have exposed some gaps in its protection mechanisms. The following issues have been identified:

[8] Consultation Document of 26.04.2017, First phase consultation of Social Partners under Article 154 TFEU on a possible revision of the Written Statement Directive (Directive 91/533/EEC) in the framework of the European Pillar of Social Rights, C(2017) 2611

[9] Consultation document of 21.09.2017, Second phase consultation of Social Partners under Article 154 TFEU on a possible revision of the Written Statement Directive (Directive 91/533/EEC) in the framework of the European Pillar of Social Rights, C(2017)6121

[10] REFIT Evaluation of the 'Written Statement Directive' (Directive 91/533/EEC), SWD(2017) 205 final, of 26.04.2017

- some workers do not receive a written statement of their working conditions at all;
- the information included in the written statements may sometimes be not sufficient and/or sometimes provided too late;
- enforcement mechanisms do not guarantee effective implementation of the legal provisions.

At the same time, as shown in the Pillar consultation[11], the current EU social acquis does not sufficiently address some of the new phenomena in the labour market. Labour market innovation is a positive phenomenon, flexibility and new and non-standard forms of work[12] contribute to job creation and widen professional opportunities. However, lack of reasonable advance notice in case of on-demand workers, unjustified exclusivity or incompatibility clauses and long probation periods are measures which may put workers in overly precarious situations. These contribute, at least to some extent, to another element of the problem covered in this initiative, namely:

- instability and an increased lack of predictability in some working relationships, affecting especially workers in most precarious jobs.

Furthermore, access to training is needed to ensure a skilled workforce. Information about available training and cost-free access to at least training which employers are required to provide related to basic skillsets necessary for the job is essential from the point of view of the worker and has many advantages for employers in terms of quality of outputs and sustainability of workforce. Yet, another problem observed is:

- insufficient access of workers to mandatory training.

Both with regard to the gaps in the provisions of the current Written Statement Directive and the question of broader gaps in the basic rights for workers an additional element of the problem is:

- diversity of protection among Member States and decreased transparency in the labour market.

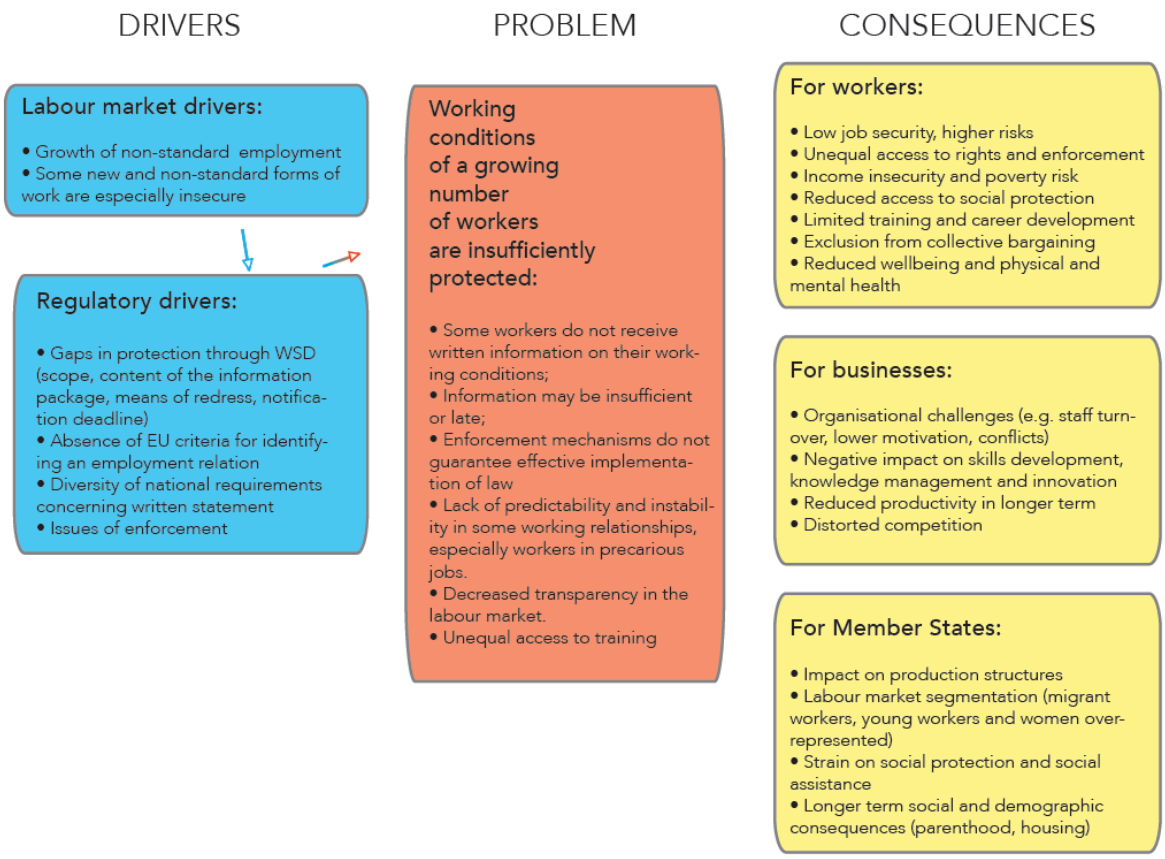
Member States adopt different derogations from the Written Statement Directive, and have different approaches to regulating new and non-standard forms of work. The fact that the EU intervenes in this area with minimum requirements allows for differences between Member States but the question arises whether the existing minimum standards

[11] SWD(2017)206 Report of the public consultation accompanying the document establishing a European Pillar of Social Rights

[12] See Annex 6 for further precision on terminology

are still sufficient to ensure level playing field and effective worker protection across the single market.

The following figure visualises the problem, its drivers and consequences.



2.2 What are the problem drivers?

The problem to be addressed results from an interaction of labour market developments, different approaches in national legislation and practice, and gaps in EU social legislation. This section presents how those factors interact.

2.1.1. Some workers do not receive a written statement of their working conditions

The Written Statement Directive gives employees the right to be notified in writing of the essential aspects of their employment relationship. **Having written information about their rights is, indeed, a prerequisite for workers to invoke their rights.** Transparency is also useful for employers and public authorities.

The **REFIT evaluation**[13] indicated however that the **scope of the Directive is problematic**. While there exists a core group of protected persons (typically working under standard open-ended or long-term contracts), many workers are not sufficiently aware of or do not possess a confirmation of some of their basic rights.

This is a result of (1) diverse application of the exemptions envisaged in the Directive[14], and (2) the fact that Member States have the possibility to define whom they consider as 'a paid employee'.

As for the first point, some two thirds of Member States use at least one of the three derogations in their national legislation.[15]

Regarding the second point, most EU Directives on working conditions, including the Written Statement Directive, refer to **national definitions of 'employees'** or 'employment relationship' for defining to whom they apply.

The Court of Justice of the EU has limited the discretion of Member States to define in national law the personal scope of certain EU social law instruments, thereby limiting the possibility to exclude individuals who do not fall within the definition of worker under national law. According to the Court's case law on the Working Time Directive as regards the application of Directive 2003/88 "*the concept of worker has an autonomous meaning specific to EU law*".[16]

It is settled case-law as regards Article 45 TFEU and other legal acts that make no reference to the definition of the term "worker" under national legislation that the **essential feature of an employment relationship** is that, *for a certain period of time, a person performs services for and under the direction of another person, in return for which he or she receives remuneration*, the legal characterisation under national law and the form of that relationship, as well as the nature of the legal relationship between those two persons, not being decisive in that regard.[17] These criteria for determining the existence of an employment relationship, and so the status of "worker", were originally developed by the Court in a 1986 judgment on the application of Article 45 TFEU and

[13] REFIT Evaluation of the 'Written Statement Directive' (Directive 91/533/EEC), SWD(2017) 205 final, of 26.04.2017; http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=202; REFIT study to support evaluation of the Written Statement Directive (91/533/EC); http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7941&type=2&furtherPubs=yes

[14] According to Article 1.2.b of the Written Statement Directive Member States may decide not to apply the Directive to employees having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours; or of a casual and/or specific nature provided, in these cases, that its non-application is justified by objective considerations.

[15] Nine Member States did not implement any derogation: BE, BG, HR, FR, PL, PT, RO, SL, LV

[16] Fenoll, C-316/13, para 26.

[17] Ruhrlandklinik, C-216/15, para 27

(the predecessor of) Directive 2004/38/EC on free movement of workers,[18] and have since been widely used by the Court to interpret references to the notion of worker in EU secondary legislation. These criteria should therefore represent the general elements, directly deriving from the Treaty, for the identification of an employment relationship.[19] In the specific context of free movement of workers, activities carried out on such a small scale as to be regarded as purely marginal and ancillary, do not qualify a "worker" within the meaning of Article 45 TFEU .

Most recently, with the *Ruhrlandklinik* judgment[20] the Court has given greater importance to the autonomous EU definition of worker also in the case where a directive specifically refers to national law, to prevent any definitions under national law from depriving the directive of its effectiveness.

Nevertheless, the reference to the Member States' definition of employment relationship leads to the Directive being applied in the Member States in a different way to the same categories of workers. Furthermore, it leads to **inconsistencies in coverage for the growing category of non-standard forms of employment**.

While the situation differs across the Member States, **some categories of workers[21] may be (partially) excluded from the provision of written statements** based on the national exemptions or differences in the national definitions of covered workers, as shown in the following table.

Table 1 – Coverage by the Written Statement Directive – Personal scope[22]

Current coverage by the WSD	Yes	Partially	No
Domestic workers	AT, BE, CY, FI, FR, DE, EL, IT, LV, LT, LU, MT, PT, RO, ES, UK	BG, HR, CZ, DK, EE, IE, PL, SK, SL	HU, NL, SE
Platform workers[23]	BE, CY, FI, DE, ES	BG, HR, CZ, DE, EE, EL, IE, IT, MT, NL, PT, RO, SK	AT, FR, HU, LT, LV, LU, PL, SL, SE, UK
Voucher-based workers	BE, HR, FI, FR, NL, ES	RO	AT, BG, CY, CZ, DK, EE, DE, EL, HU,

[18] Lawrie-Blum, C-66/85, para 12

[19] Also to distinguish such an employment situation from that of self-employed, which on the contrary fall under the scope of Article 56 and ff. of the Treaty, see Asscher Case C-107/94, para 26.

[20] C-216/15

[21] Further information on these categories and note on terminology is on Annex 6

[22] Source "Study to support Impact Assessment on the Review of the Written Statement Directive" by CSES and PPMI.

[23] To be noted that majority of platform workers operate as self-employed and as such are outside of scope of EU labour law.

			IE, IT, LT, LV, LU, MT, PL, PT, SK, SL, SE, UK
Paid trainees	BE, CY, DK, FR, DE, EL, IT, LV, LT, LU, MT, NL, PL, PT, SL, ES	AT, BG, HR, EE, IE, RO, SK, SE, UK	CZ, FI, HU
Workers employed for less than 1 month	BE, BG, HR, EE, FR, HU, IT, LV, LU, NL, PL, PT, RO, SL	SE	AT, CY, CZ, DK, FI, DE, EL, IE, LT, MT, SK, ES, UK.
People working less than 8h/week	AT, BE, BG, HR, CZ, EE, FI, FR, DE, EL, HU, IE, IT, LV, LT, LU, NL, PO, PT, RO, SK, SL, ES, UK.	-	CY, DK, MT, SE
Casual workers: 1) Zero-hours contracts	BE, FI, FR, EL, NL, ES, SE	BG, HR. CY. CZ, DK, IE, IT, PL, RO, SK, UK	AT, HU, LV, LT, SL (illegal) EE, DE, LU, MT, PT (do not exist either in law or practice)
Casual workers 2) On-demand workers	BE, FI, FR, DE, EL, HU, LT, NL, ES, SE	BG, HR, CY, CZ, DK, IE, IT, PL, RO, SK, SL, UK	AT, LV (illegal) EE, LU, MT, PT (do not exist either in law or practice)
Casual workers 3) Intermittent workers	BE, EE, FI, FR, DE, EL, LV, LT, NL, PT, RO, ES, SE	AT, BG, HR, CY, CZ, DK, HU, IE, IT, PL, SK, SL, UK	LU, MT (do not exist either in law or practice)
Temporary Agency workers	BE, HR, CY, DK, EE, FI, FR, DE, HU, IE, IT, LV, LT, LU, NL, PL, PT, RO, SK, ES, SE	BG, CZ, EL, ML, SL	AT, UK

The situation is also unclear with regard to the "*bogus self-employed*". While the Written Statement Directive applies only to workers, and the self-employed are in principle outside its scope, the boundary between the two categories is in fact becoming more difficult to draw. Such blurring of status jeopardises the effectiveness of labour law which is dependent on the status of employment. **To the extent that workers are wrongly categorised as self-employed, they are removed from the protection of the EU acquis to which they should in fact be subject.**

Table 1 in Annex 6 summarises available data concerning the categories of workers mentioned above. Further information on those forms of work is available in the Analytical Document accompanying the second stage consultation of the Social Partners.[24]

[24] SWD(2017)301 final.

Overall, while relevant data are scarce and difficult to compare, and there are overlaps between the different forms of employment, an estimated number of **2-3 million workers**[25] in those specific forms of work in the EU are excluded from the right to receive written confirmation of their working conditions. The high diversity of national approaches constitutes an **obstacle to the full effectiveness** of the Directive.

Among those who are at least partially excluded from protection of the Written Statement Directive is a relatively high proportion of **vulnerable workers.** Available data indicate for example that non-standard jobs - and particularly fixed-term jobs - are disproportionately held by younger, less-educated and lower-skilled workers. There is also a gender bias, with women over-represented among non-standard workers.[26]

Moreover, while in the original Directive the possible exemptions from scope were envisaged for marginal situations, available data show that **those forms of work have been growing** in the last decades. For example, the number of workers **working eight hours or less per week** increased from 3.4 million in 2005 to 3.8 million in 2016.[27] The number of **employees on contracts lasting less than one month** has grown from 373,000 in 2002 to almost 1.3 million in 2016,[28] indicating that this extremely short duration of work contracts will continue to be a feature of the EU labour market in years to come. People active on platforms currently represent 0.5-2% of the workforce according to different studies[29] but their numbers have been increasing significantly over the last 5 years and thus their share in the workforce might also further increase.

An increasing number of workers are not protected by the Directive, and therefore at risk of not being (fully) aware of their employment conditions or their rights. While many Member States have extended their national legal framework to cover these workers; the legal analysis performed at Member-State level for the REFIT evaluation revealed high levels of variation across countries and **uncertainty over whether the new and non-standard forms of employment fall within the scope of the Directive**.[30]

[25] Source "Study to support Impact Assessment on the Review of the Written Statement Directive" by CSES and PPMI.

[26] For a full discussion on characteristics of non-standard workers see the Analytical Document SWD(2017)301 final, pages 19-41.

[27] Own calculations based on EU-LFS

[28] Own calculations based on EU-LFS

[29] *Inter alia* "The Future of Work in the 'Sharing Economy", Codagnone et al, JRC (2016) and Eurofound (2017), Aspects of non-standard employment in Europe, Eurofound, Dublin

[30] See section 5.1.7 of the REFIT Study.

2.1.2. The information included in the written statements may sometimes be not sufficient and/or provided too late

Article 2 of the Directive creates the obligation for employers to notify employees of the essential aspects of their employment relationship and defines a non-exhaustive list of these essential elements which, in practice, however, generally constitutes the standard package of information provided.

The Directive stipulates also that the written statement must be provided to the employee not later than two months after the commencement of employment. Modifications to any of the elements in Article 2 must be notified within one month.

According to the REFIT evaluation, while the information package was assessed by most stakeholders as being sufficient as a minimum standard, the **two-month deadline** to provide a written statement creates transparency problems and increases the potential for undeclared work or abuse of employee rights. Receiving a written statement earlier is also especially important for the growing number of workers whose contracts are of very short duration.

The REFIT evaluation has shown that a vast majority of the Member States surveyed have introduced more stringent deadlines for the employer to comply with the information obligation. Of these, eight Member States[31] have set the obligation at the beginning of the employment relationship. According to the national laws transposing the Directive in these eight countries, the employee is to receive the information required *before* the employment starts.

This issue of the right to be informed is taken up in Principle 7a of the Social Pillar: "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 on probation period".[32] Currently, every year some 8-16 million EU workers starting a new job receive a written statement later than on the first day.[33]

In the light of the Social Pillar principle, and in the light of the very modest costs of providing a written statement,[34] and of the changes to the types and diversity of employment practices since the Directive was adopted in 1991, an adaptation of the list contained in Article 2(2) could be appropriate. As indicated by national experts consulted for the purpose of the external study, in the age of intensive labour migration between the EU Member States, the standard package of information prescribed by the Directive is no longer sufficient. Most migrant or low skilled workers lack information about the social

[31] BG, HR, LV, LT, LU, PL, RO, SI

[32] C(2017)2600 Commission Recommendation of 26.4.2017 on the European Pillar of Social Rights

[33] Source "Study to support Impact Assessment on the Review of the Written Statement Directive" by CSES and PPMI. Calculations assuming annual turnover of 10-20%.

[34] These are estimated as less than EUR 60 per worker, see SWD(2017)205 final, page 28

security system to which the employer is contributing. This leads to poor social protection of such workers. Finally, the most pressing issue, as indicated by the national experts, is the lack of information about working time, particularly where the work schedule is variable.

The consultation process leading to the REFIT evaluation gave some indications of elements that could be added, namely information on hours the worker is expected to work, especially when the work schedule is variable; information about overtime regulations or non-competition clauses; the right to sickness, maternity and paternity leave and pension rights; the levels of collective bargaining applicable.[35] Worker organisations responding to the second phase consultation proposed further additions, as summarised in Annex 2.

2.1.3. Enforcement mechanisms do not guarantee effective implementation of the legal provisions

Rights are only meaningful when they are implemented and taken up by those they protect. The 2016 Commission Communication *EU Law: better results through better application* highlights the importance of accessible and appropriate redress mechanisms for citizens whose rights under EU law have been breached.[36] The public consultation on the European Pillar of Social Rights[37] underlined that workers are often deprived of their rights by weak enforcement provisions. In the context of EU labour law, unlike in other areas, there are very few provisions directly concerned with enforcement of rights.

Evidence collected through the REFIT evaluation indicated that there is **medium to high observance among employers** of the Directive as transposed into national law. The main issues surrounding observance are associated with the 'grey' area between self-employment and subordinate employer-employee arrangements and new and non-standard forms of employment.

At the same time, there is a medium to high level of understanding among employers of their information obligations towards employees. The level of awareness seems to greatly vary across Member States and there are also significant variations relative to the size of the undertakings: larger enterprises appear to be more familiar with the national requirements related to the Directive, as compared to micro enterprises.

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[35] Ramboll Management Consulting, *REFIT study to support evaluation of the Written Statement Directive*, March 2016, page 57.

[36] COM(2016)8600, section 4.

[37] Delivering on the European Pillar of Social Rights, http://ec.europa.eu/social/main.jsp?catId=1226&langId=en ;and Public consultation on the European Pillar of Social Rights http://ec.europa.eu/social/main.jsp?catId=333&langId=en&consultId=22&visib=0&furtherConsult=yes

The evaluation further highlighted that the **enforcement of workers' rights** could be improved by reviewing means of redress and sanctions in case of non-compliance.[38]

The Directive, in its Article 8, establishes the right for employees who consider themselves wronged by an employer's failure to comply with its obligations arising from its provisions to pursue their claims by judicial process. Member States may also establish two steps that would precede judicial proceedings: (i) recourse to a competent authority such as a labour inspectorate or an administrative body; (ii) a formal notice given to the employer calling on it to issue the written statement within 15 days.

The REFIT evaluation has confirmed that all Member States provide for access to the relevant national court which is in general the Labour Court.[39]

As regards sanctions imposed on employers who fail to comply, the REFIT evaluation distinguishes between: (i) a majority of Member States where financial compensation can be granted only to employees who prove that they have suffered damage; and (ii) a minority of Member States where sanctions such as lump sum penalties or loss of permits can be imposed in addition on the employer for failure to issue the written statement.

The REFIT evaluation concluded that redress systems based only on claims for damages are less effective than systems that also provide for sanctions such as lump sum penalties. The limited extent of case law indicates that **workers whose rights under the Directive have been infringed are reluctant to pursue litigation while in employment**. Generally any litigation is related to the working conditions themselves not to the absence of information about them.

To achieve the goal of the Directive its enforcement must be ensured through adequate recourse via enforcement authorities and appropriate and dissuasive sanctions. Greater clarity on legal obligations and raising awareness of employers concerning their obligations resulting from national transpositions of the Directive could also contribute to a better implementation of the Directive.

2.2.4. An increased instability and lack of predictability in some working relationships

The European Union has built over the years a strong core of individual rights for workers, encompassing information to each worker about his/her working conditions; health and safety protection, including limits on working time; combating discrimination and abuse of non-standard employment types; equal treatment at the workplace; conditions for workers posted to another Member State and third country nationals coming to work in the EU. A further set of Directives provide for minimum standards in relation to collective rights: for representation via European Works Councils; for

[38] SWD (2017)205, page 4.
[39] SWD (2017)205, page 17.

information and consultation in relation to structural changes in companies; in relation to collective redundancies; and for transfers of undertakings.[40]

These labour market developments have however created gaps and/or deficiencies in EU and national legal frameworks. As a result, the **existing EU labour law acquis, including but not limited to the Written Statement Directive, does not apply today uniformly to all workers,** creating disparities and leading to inequalities in terms of working conditions and social protection in general.[41]

While a full-time permanent labour contract is still the predominant contractual employment relationship, **non-standard work**[42] **has increased over the last 20 years**. In 1995, less than 21% of the EU-15 workforce had non-standard contracts. This proportion had increased to over 25% in the EU-28 by 2016. **In the last ten years more than half of all new jobs were non-standard.**[43]

As the public consultation on the European Pillar of Social Rights clearly revealed, there is a growing challenge to define and apply appropriate rights for many workers in new and non-standard forms of employment relationships across the EU. Such forms of work create opportunities for people to enter or remain in the labour market and the flexibility they offer can be a matter of personal choice. However, inadequate regulation may lead many of them being stuck in legal loopholes that make them subject to unclear or unfair practices and make it difficult to enforce their rights.[44]

Moreover, for many workers non-standard employment is not a voluntary choice. It is estimated, for example, that **over two thirds of employees who work on temporary contracts do so involuntarily.** This is especially true of prime-age and older workers. In 2016, 76.7 % of prime-age and older temporary employees and 68.5 % of younger temporary employees were working on a temporary contract because they could not find a permanent one.[45]

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[40] For a summary of EU social acquis see Annex 7.

[41] See the parallel European Commission initiative "Social Protection for All" which addresses the challenges of access to social protection for people in all forms of employment in the framework of the European Pillar of Social Rights.

[42] Non-standard work here includes permanent part-time, temporary full-time and part-time.

[43] In absolute terms, there were 4.9 million more employees on non-standard contracts in 2016 compared with a decade before, but only 3.4 million more employees with standard contracts (permanent full-time). Own calculations based on EU-LFS. The growth of non-standard employment has also been pointed out by the European Parliament, European Parliament resolution of 4 July 2017 on working conditions and precarious employment.

[44] See launching Communication COM(2016)127 final and Report of the public consultation SWD(2017)206 final, pages 18-21.

[45] Own calculations based on EU-LFS. See Figure 1 in Annex 6

Additionally, in the new world of work, working lives are expected to be longer and less linear: they will likely be marked by numerous transitions between jobs and professions, as well as by changing needs in demand, or life-cycle and work-cycle pressures requiring career interruptions or breaks for caring responsibilities, or for seeking access to re-skilling opportunities.[46] Job tenure is changing at a rapid pace. Nowadays only 2 in 5 Europeans work for the same employer for more than 10 years. It was 3 in 5 only 10 years ago.[47]

Overall, labour market developments have led to an increase in various mechanisms which affect working conditions of many workers in the EU, including some in the new and non-standard forms of work. The challenge is how to ensure that the current dynamics, while allowing for job creation and labour market innovation, are framed in a way that allow for upward convergence in social standards across the EU.

- ***Very variable work schedules***

Flexibility is a key charateristic of new forms of work and flexible hours can be positive for workers, as it generates new jobs and can allow them an entry into the labour market (e.g. 18% of workers on zero hours contract in the UK are in full-time education), but workers in lower-level occupations are less likely to have the bargaining power to negotiate their working schedules, or more likely to have no autonomy or control over their schedules. The consequences of precariousness are often severe for workers who need stable work schedules and income levels. Lack of reference hours and short or no advance notice before an assignment are features of working relationships especially affecting casual workers (on-demand and intermittent). There are some 4-6 million such workers in the EU (including but not limited to workers on zero-hours contracts).[48]

The interval between being requested to work and the actual start of work varies in these types of jobs in line with company practice and the incidence of HR needs. Among the case studies set out in the Eurofound report,[49] there are examples of employers summoning casual workers only one hour before the shift starts and others doing so as long as four weeks in advance. A UK survey showed that one-third of undertakings using zero-hours contracts have a set policy for the notice period required for staff asked to work, 40% had no policy, and the remainder did not know if they had one. Almost half of zero-hours workers said they have no notice; workers might even discover at the start of a shift that their work has been cancelled. On receiving a job offer, a casual worker may

[46] European Commission, SWD(2016)51 Key economic, employment and social trends behind the European Pillar of Social Rights.
[47] European Commission, Reflection paper on the social dimension of Europe
[48] Source "Study to support Impact Assessment on the Review of the Written Statement Directive" by CSES and PPMI.
[49] Eurofound, *New forms of employment*, 2015, page 48.

decline, in which case, the next candidate is contacted. However, in several case studies, respondents said that repeated refusal makes it less likely that a worker will be asked to come to work. In a UK survey, 17% of zero-hours workers said that they are sometimes penalised if they refuse a call-in, and 3% said they were always penalised.

- ***Exclusivity and incompatibility clauses***

Exclusivity clauses prevent workers from taking on any other work at all. Incompatibility clauses impede them from taking on work with other specific employers ('work providers'). Exclusivity and incompatibility clauses can put a disproportionate burden on the worker, particularly if not employed full-time, who has limited possibilities for ensuring not only income security and stability, but also to seek further work to reduce the risk of poverty. In economic terms, exclusivity and incompatibility clauses can exacerbate situations of underemployment.[50]

In the EU some Member States limit or even ban the use of exclusivity and incompatibility clauses, while in others such clauses are permitted. It is estimated that among workers who are most negatively affected by such clauses (casual and voucher-based) an estimated 0.5-1.5 million are subject to them.[51]

- ***Limited opportunities to transit to another (more permanent) form of employment***

New and non-standard forms of employment may offer good opportunities to enter labour market for people who would otherwise have difficulties to do so. However, lack of possibilities to move on to more permanent positions for those who would like to contributes to labour market segmentation and underemployment.

Indeed, the rate of transitions from temporary to permanent jobs is only some 23%, with a great variation across the EU (from 10% in France to 59% in the UK).[52]

Also among part-time workers there is a growing proportion of people who work part-time involuntarily and would like to work more hours. Self-reported **involuntary part-time work** increased from 22.4% of all part-time work to 27.7% between 2007 and 2016.[53] Women, younger workers, less educated workers and – especially – workers new to their current job (tenure < 1 year), those on temporary contracts and in low-paid professions are more likely to be involuntary part-time workers.

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[50] EP-IPOL Economic and scientific policy, *Precarious Employment in Europe: Patterns, Trends and Policy Strategy*, 2016

[51] Source "Study to support Impact Assessment on the Review of the Written Statement Directive" by CSES and PPMI.

[52] Eurostat. See Figure 2 in Annex 6.

[53] Eurostat. Note that part of this may relate to cyclical reasons (remaining labour market slack).

According to the ECB, 3% of the working age population is currently underemployed (i.e. working fewer hours than they would like). Currently there are around seven million underemployed part-time workers across the euro area – an increase of around one million since the start of the crisis. Moreover, the number has declined only very modestly over the past two years, despite robust employment growth.[54]

- ***Unjustifiably long probation periods***

Probation periods offer the worker the opportunity to be supported and developed to meet the requirements of the job, and the employer to test the suitability of the worker for that job. During probation periods, the conditions attaching to the termination of the employment contract are often light and some protective measures that normally apply in case of dismissal are absent (e.g. notice period and severance pay). Therefore, overly long probation periods, in which employment rights are inferior to standard employment, may limit worker protection.[55]

- ***Insufficient access to basic training***

Across the EU, 43% of adult employees have seen the technologies they use change in the past five years and 47% have seen changes in working methods or practices.[56] Yet, only 40% of workers in the EU receive training at work.[57] While 40% of workers who do not receive training state that this is because they do not need it, there is a proportion of workers who are deprived of training opportunities because of lack of employer's support (4%), too high costs (7.5%) or lack of suitable offer (4%).[58] Access to training is also more limited among workers in non-standard employment.[59] Evidence based on the OECD Adult Skills Survey shows that on average being on temporary contracts reduces the probability of receiving employer-sponsored training by 14%.[60]

2.2.5. Decreased transparency in the labour market

Apart from improving the protection of workers, the Written Statement Directive aimed to increase transparency in the labour market and improve the operation of the EU internal market.[61] Indeed, by setting minimum requirements for the information to be

[54] See Figure 3 in Annex 6.
[55] This could in practice apply to some 0.5-1.5 million workers in the UK and Ireland.
[56] Cedefop's European skills and jobs survey (ESJS), 2014. For more information, see http://www.cedefop.europa.eu/en/events-and-projects/projects/european-skills-and-jobs-esj-survey
[57] EWCS 2015
[58] Eurostat 2011 [trng_aes_179]
[59] See Figure 4 in Annex 76
[60] OECD Employment Outlook 2014, *Non-regular employment, job security and labour market divide*, p. 141-209
[61] Explanatory memorandum to the proposal for a Directive, COM(90) 563 final.

provided individually to employees, the Directive aimed to reduce differences between Member States' legislation.

The minimum requirements set in the Directive corresponded to the labour market reality 25 years ago. However, as described earlier, labour markets have since undergone deep transformations. As the EU level legislation remained stable, some Member States put in place some new regulations and certain national social partners developed new collective agreements, leading to an increasingly diverse picture across the EU.

Just as there are significant differences across the Member States with regard to the **personal scope of national transpositions of the Written Statement Directive** (see section 2.2.1), the situation also differs in relation to **the protection of workers in the most precarious situations**. Most of the new and non-standard forms of work referred to above do not have a specific legal or collectively agreed basis in most Member States.[62] This is probably due to their newness and their recent emergence through individual company practice rather than a strategically planned labour market development. They are regulated (or not) in very different ways across the EU, and the legal frameworks are in constant change to address these new phenomena. The diversity of regulation is also related to the fact that in each Member State there is a different mix of the new forms of employment.

This **diversity of national provisions on new and non-standard work** as they currently exist is a further regulatory driver. Some forms of work are not consistently covered by labour market regulation across the EU, and this diversity hampers equal treatment between workers in the same situation, who are protected in very different ways in different EU Member States.

2.3 Why is it a problem?

2.3.1. Workers

The problems described above have an impact on all workers in the EU, in particular those who find themselves in the most precarious forms of employment.

Those on standard contracts are still relatively well protected: they generally receive written statements and some of the labour market measures which cause precariousness, such as lack of reference hours or lack of notice before assignements, do not affect them. However, also for those workers written statements may be delivered too late, the information provided may not be sufficient, enforcement mechanisms may not be strong enough to guarantee protection. Also, some workers on standard contracts can be subject to overly long probation periods and some 55% do not receive training at work.

[62] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg, page 136.

Lack of written statements, delayed or incomplete information provided to some workers, as well as the broader issue of insufficient predictability of working conditions have an even more significant impact on workers in non-standard employment, in particular those in the most precarious employment situations. Some workers suffer negative consequences due to a combination of all the described problems: not only do they lack the basic protection of receiving a written statement but also have extremely variable working schedules, limited access to more permanent positions, limited possibilities to earn additional income due to exclusivity or incompatibility clauses or unpredictable work patterns.

Non-standard jobs are disproportionately held by women, by young workers, and by less-educated, lower-skilled workers and by migrant workers, generally not on a voluntary basis.

A combination of many such factors means that workers in new and non-standard forms of employment are more likely to suffer from job insecurity. Non-standard jobs tend to offer lower hourly pay than permanent full-time jobs[63] and as a result pose the highest poverty risk among those in employment.[64] Non-standard employment goes together with a higher risk of unemployment and inactivity.[65] At the same time non-standard workers tend to have shorter and lower records of social security contributions and this negatively affects their eligibility for social security benefits, as well as the amount and duration of those benefits.[66]

Some categories of workers in new and non-standard forms of employment are less protected from occupational safety and health risks and are more likely to suffer from stress at work.[67] Such negative health impacts are confirmed even among young people.[68]

Workers in the new forms of employment also tend to have more limited access to representation and collective bargaining.[69] Low transition rates from temporary to

[63] European Commission (2016), "Employment dynamics and social implications", Chapter 2 in Employment and Social Developments in Europe 2016. Luxembourg: Publication Office of the European Commission.

[64] European Commission (2017), "Working lives: the foundation of prosperity for all generations". Chapter 3 in Employment and Social Developments in Europe 2017, published on 18 July 2017.

[65] OECD Employment Outlook 2014, Non-regular employment, job security and labour market divide, p. 141-209

[66] Matsaganis M., Özdemir E., Ward T., Zavakou A. (2016), "Non-standard employment and access to social security benefits", Social Situation Monitor research note, European Union.

[67] Eurofound (2010) *Work-Related Stress*, p.17.

[68] 'Economic activity and health – Initial findings from the Next Steps Age 25 Sweep' by Dr Morag Henderson, Centre for Longitudinal Studies, 5.07.2016 (http://www.cls.ioe.ac.uk/shared/get-file.ashx?itemtype=document&id=3301)

[69] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg, page 139.

permanent jobs suggest that inequalities tend to persist over time. Evidence for EU Member States shows that less than 50% of the workers who were on temporary contracts in a given year were employed with full time permanent contracts three years later.[70]

Inequalities in the access to rights, collective bargaining and enforcement deepen gaps in job security, income and access to social protection, and limit access to training and professional development.[71]

2.3.2. Business

As described above, the direct consequence of diversity of national implementation of the Written Statement Directive as well as lack of EU minimum requirements for some of the most flexible employment practices in new and non-standard forms of employment, is a decreased effectiveness of the EU internal market. For companies this means a greater exposure to unfair competition, and for those operating across borders the need to adjust business models to 28 different legislative frameworks.

Some non-standard or atypical forms of employment can offer flexibility both to the employer and the employee. Employers can benefit from the opportunity to expand or to respond flexibly to fluctuations in demand without having the risks associated with taking on staff permanently. They can also retain the skills of workers who wish to work only casually or intermittently (e.g. semi-retired workers, workers with family responsibilities). Some employees do not wish to commit to regular working hours, such as students, semi-retired workers, workers with family responsibilities. In some cases, workers may accept a second job with flexible working hours because they want to enjoy occasional opportunities for additional income rather than committing to regularly working additional hours with a second employer.

However, employers who rely to a large extent on non-standard work are exposed to some longer-term disadvantages associated with such a business model.

A frequent issue is that relying on non-standard employment arrangements can have a negative impact on the commitment of hired-in workers and that the insufficient protection of working conditions of certain employees leads to a decrease in

[70] OECD Employment Outlook 2014, Non-regular employment, job security and labour market divide, p. 141-209

[71] European Parliament Policy Department C, *Temporary contracts, precarious employment, employees' fundamental rights and EU employment law: A study for the PETI Committee*, November 2017, Section 1.2.

commitment.[72] A literature review from the ILO[73] indicates that the weaker attachment is likely to be manifested in a reduced attempt to assimilate socially, lower performance, lower motivation and effort as compared to regular workers, including higher absenteeism, lower job satisfaction, or lower commitment to the organization. Innovation may be negatively affected by insecurity in employment relationships leading to a lack of trust and risk-averse behaviour.[74]

The increasingly widespread use of temporary work risks harming productivity growth (ESDE 2017).[75,76] There is evidence that a high proportion of temporary work, even when controlling for sectoral differences and for firm size, harms total factor productivity growth in various ways, with the impact being more damaging in skilled sectors.

Data from the European Union Structure of Earnings Survey (SES)[77] reveals that in 2014, only some 4% of firms used non-standard forms of work intensively (more than 50 % of their workers were either fixed-term or temporary agency workers). 52% of the firms make no use of temporary employees, while for some 44% the share of temporary workers ranges between 0-50%. In the same vein, 2016 data from the UK shows that only some 7% of enterprises make some use of contracts that do not guarantee a minimum number of hours and use of such contracts is significantly more widespread among the biggest enterprises in comparison with SMEs.[78]

This implies that the relatively large number of companies in Europe providing workers with protection related to standard employment status risk being in a disadvantaged position in relation to companies which compete on the basis of reduced labour costs.

66% of EU companies provide some vocational training.[79] However, in general, the greater the proportion of non-standard workers in an organization, the less the

[72]World Health Organization, Regional Office for Europe, *Enterprise for Health-A joint project between AOK for Lower Saxony and WHO,* p.2

[73] "Non-standard employment around the world: Understanding challenges, shaping prospects" International Labour Office – Geneva: ILO.

[74] The above statements are based on a literature review presented in the "Non-standard employment around the world: Understanding challenges, shaping prospects" International Labour Office – Geneva: ILO 2016, and "Non-standard forms of employment. Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment" (Geneva, 16–19 February 2015)/International Labour Office, Conditions of Work and Equality Department, Geneva, 2015

[75] Ibidem

[76] OECD Employment Outlook 2014, Non-regular employment, job security and labour market divide, p. 141-209

[77] Establishment level survey covering private sector firms with at least ten employees in 22 European countries

[78]https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeaminimumnumberofhours/may2017

[79] Eurostat 2011 [trng_cvts02]

organization will invest in training and development.[80] Underinvestment in training, both for temporary and permanent employees, reduces incentives to invest in productivity-enhancing technology and patenting, and slows down innovation. An over-reliance on temporary workers, especially if they are low skilled, may end up deskilling the organization as a whole and have a detrimental effect on the working environment for all workers.[81]

2.3.3. Member States

Lack of written statements for a growing number of workers, written statements which are delivered too late or do not contain all the relevant information, as well as weaknesses in enforcement mechanisms can have direct negative consequences for Member States in terms of the capacity to prevent undeclared work and prevent abuse of workers' rights.

With regard to the broader question of regulation of new and non-stardard forms of work, Eurofound[82] points out that these can have positive effects: creating new jobs, allowing for a professional activation of a greater number of people (including vulnerable workers) and reconciliation between private and professional lives. However, lack of job predictability, exacerbated by measures such as extremely variable work schedules, exclusivity clauses, lack of training opportunities or opportunities to move towards standard forms of employment, contribute to labour market segmentation and impact most the most vulnerable groups of workers, leading to underemployment, higher poverty risk and strain on social protection systems. As noted above, non-standard jobs tend to be performed by women, young, migrant, and less educated workers, so increasing labour market segmentation and the risk of social exclusion for these groups.

Indirectly, there can be negative consequences for the sustainability of public finance, as well as for demography and social cohesion.

Underemployment caused e.g. by exclusivity clauses and unpredictable work shifts preventing a worker taking on more work has costs in reduced tax contributions, higher social spending or reduced consumption.

The growing precariousness of the labour market is affecting household decisions across generations.[83] The increase in non-standard jobs for younger generations has started to cause discontinuity and variation in income levels. As a consequence it has become more

[80] 63% of companies with 10-49 employees, 81% in companies with 50-249 employees, 93% in bigger companies.

[81] Håkansson and Isidorsson, 2012

[83] ESDE, 2017

common for their parents to make financial transfers to assist them with rent expenses or mortgage costs/deposits,[84] and for those without access to such resources to be excluded from the housing market or pushed to its margins. Such processes increase the risk of socio political exclusion.

The widespread increase in non-standard work is likely to be one of the causes of delayed parenthood.[85] The mean age at which women become mothers is highly correlated to the proportion of non-standard workers among younger people in the country and is increasing, so exacerbating demographic imbalances.

2.4 How will the problem evolve?

In the absence of EU action the insufficient protection of workers, including those in new and non-standard forms of employment, and the resulting negative consequences for businesses, Member States and the internal market will most likely increase.

Firstly, economic, social and technological developments may continue to **increase different forms of non-standard work** as well as to further diversify new forms of employment, thus potentially leading to a further **increase in the number of workers not covered by the provisions of the Directive and/or exposed to some of the measures increasing insecurity of employment**.

The future of work will be marked by a growing need for flexibility, fast pace, adaptability and autonomy, which will increase incentives for companies to use on-demand work, short-term contracts, or outsourcing.[86]

Across the EU, as discussed in section 2.2.1., the volume of non-standard work[87] has increased over the last two decades. This steady increase indicates that the **trend is likely to be of a structural, rather than a cyclical, nature.** Some of the new and non-standard forms of work addressed by this initiative have been expanding particularly strongly over recent years and have potential for further significant growth in the future. This is the case e.g. for platform work, temporary agency work, domestic and/or voucher-based work. A growing trend has also been observed in individual Member States.[88]

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[84] "Non-standard employment around the world: Understanding challenges, shaping prospects" International Labour Office – Geneva: ILO. 2016, p.221

[85] ESDE, 2017

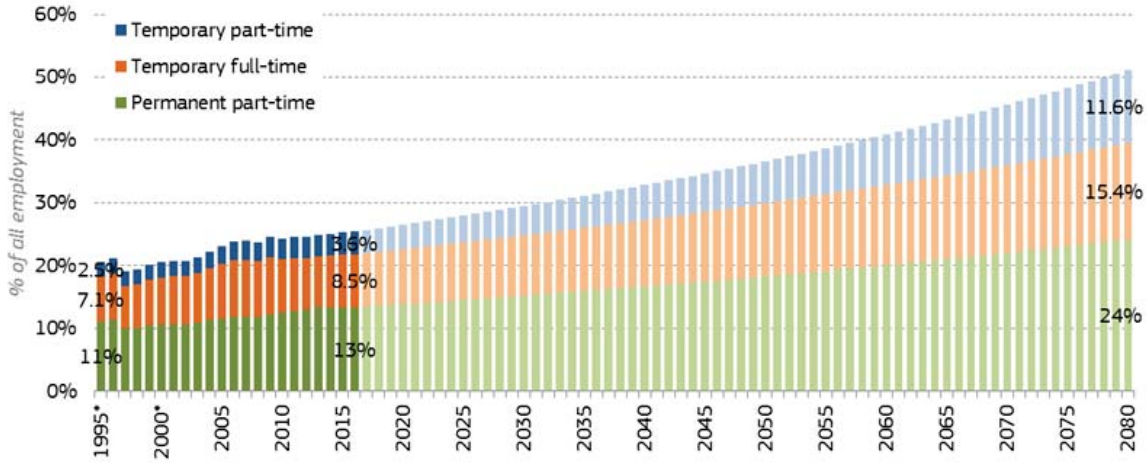
[86] https://ec.europa.eu/epsc/sites/epsc/files/strategic_note_issue_13.pdf

[87] Non-standard work here includes permanent part-time, temporary full-time and part-time.

[88] Source: EPPO network. For example, in Belgium for the period between 2008 and 2015, there was increase for temporary agency workers (from 384.000 to 424.000), for casual and seasonal workers (4.000 to 6.000). A new regime of flexi-jobs (14.000 in 2015) was created and is likely to expand.

Assuming that the average year-on-year growth rates between 1995 and 2016 for each type of non-standard work continue into the future, non-standard work would go from being a fourth of all employment contracts in 2016, to representing more than 35% of all employment in 2050 (see Chart 1). [89] In addition, these data only partially capture casual work.

Chart 1 – Evolution of non-standard work (1995-2016) and projection for the future (2017-2080) by type of contract, EU-15 (1995-2001) and EU-28 (2002-2080)



Note: For the evolution by type of contract from 2016 onwards, average year-on-year growth rates by type of contract share between 1995 and 2016 were used.
Source: Own calculations based on EU-LFS.

Moreover, it is likely that the **extent and direction of national regulatory responses to the new and non-standard forms of work will continue to be diverse**, leading to diverging levels of protection of workers across the EU and consequently different conditions for business as regards labour law conditions. Indeed, across the EU the legal frameworks are in constant change to try to regulate these new phenomena.

[89] Projections beyond 20 years are associated with a high degree of uncertainty.

Regulation of on-demand work
An example of developments in Member States' legislation on non-standard work

- **No regulation** (e.g. **PL, BE, FI, CY, HR, GR, SL**). Either casual work is not a common practice, or exists without being regulated. For instance in **CZ**, agreement on working activities is allowed within a certain number of hours/year but is not subject to regulation so leads to very limited access to standard worker rights.

- On-demand work and zero hours contracts are **considered illegal** (e.g. **AT, FR, BG, LU, and LV**). For instance in **AT**, every legally valid employment contract must include the number of hours the employee is expected to work.

- **Regulation of zero hours contracts and some types of casual work** (e.g. **UK, HU**, **IT, DE, NL, ES, RO, IT, PT, IE**). For instance in **DE**, an on-demand work contract must specify the number of daily and weekly working hours; by default the amount of daily working hours is deemed to be three. In **ES, RO and PT** casual work is allowed in the agricultural sector or for seasonal activities. In the **NL** zero hours clauses can only be concluded for the first 6 months of employment with the same employer.

3. WHY SHOULD THE EU ACT?

3.1 Legal basis

The initiative will support Union's aims recognised in Article 3 TEU: to promote the well-being of its peoples, the sustainable development of Europe aiming at full employment and social progress, but also the aim to promote social justice and protection, equality between women and men and solidarity between generations.[90]

In the current Treaty framework,[91] the appropriate legal basis would be Article 153 TFEU: 153(1)(b)" With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields: (b) working conditions"; 153 (2) (b) "to this end, the European Parliament and the Council may adopt (…) by means of directives minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

[90] TEU Art 3

[91] Directive 91/533/EU was adopted under Article 100 of the then EEC Treaty.

Indeed, Article 151 TFEU provides that the Union and the Member States aim at the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

3.2 Results of the social partner consultations

Consultation of representative social partner organisations in two phases in accordance with Article 154 TFEU took place previous to the presentation of the proposal.

The views of the social partners were mixed on the need for legislative action to revise Directive 91/533/EEC.

In both phases **trade unions** were in favour of clarifying and broadening the personal scope of the Directive, in particular through removing exclusions from personal scope and including criteria to assist with identifying the existence of an employment relationship. In addition, they argued for the inclusion of self-employed in the scope of application. With regard to the information package, trade unions agreed with the list suggested in the consultation document and argued for further additions to the package. They called for written statements to be provided prior to the start of the work or immediately on signing the contract. The need to improve access to sanctions and means of redress was acknowledged, including by calling for the introduction of a presumption of employment in case the employer fails to provide a written statement. Finally, they were strongly in favour of new minimum rights aimed at improving transparency and predictabiltiy of working conditions. They however requested more rights than those presented in the second consutlation document including a complete ban on forms of contractual arrangements not guaranting workers a minimum of paid hours and a right to adequate remuneration.

In both phases **employers' organisations** opposed the extension of the scope of application of the Directive and the insertion of a definition of worker, based on concerns related to flexibility for business and job creation potential as well as to subsidiarity. A majority did not support amending the information package nor reducing the 2 months' deadline. No organisation supported changes at EU level to the system of redress and sanctions. With very limited exceptions, employer organisations were opposed to the inclusion of new minimum rights in a revised Directive. For that reason, they preferred not to express views on specific minimum rights set out in the consultation document, arguing that such issues were a matter of national competence and that it was not necessary, or even contrary to the principle of subsidiarity, for the EU to act in these fields.

The social partners did not reach an agreement to launch the negotiation process provided for under Article 155 TFEU. It is however important to improve protection in this area by modernising and adapting the current legal framework, while taking into account the diverging views expressed by the social partners.[92]

3.3 Subsidiarity: Necessity of EU action and added value of EU action

The social dimension of the internal market – promoting fairness and social standards

The described multiplication of forms of work requires an assessment of the need for additional common standards for working conditions to support equal treatment of workers, a level playing field across the EU, and upward convergence in employment and social outcomes.

An increasing number of workers not protected by the Directive, uncertainty over whether new or non-standard forms of employment fall within its scope and divergencies in (timely) notification of essential elements of an employment relationship may lead to precarious employment relationships or employment conditions, additional risks to the health and safety of workers, and harmful social competition within and across Member States. While collective agreements are an effective tool to complement and extend protection established in national legislation, these are also diverse and workers in the most casual forms of work are currently often excluded from collective bargaining. There is therefore a need to explore the opportunity for improved common action at EU level.

Furthermore, there is a risk of race to the bottom in standards applying to new forms of work where the regulatory framework is weaker and more patchy across Member States, and their efforts to ensure minimum protection of workers is likely to lead to increasingly divergent and even contradictory national solutions, creating regulatory loopholes when viewed from an EU perspective, and leading to inequality in the protection of workers and their living conditions. Eventually it could affect the quality of the workforce, the relative competitiveness of employers, companies and Member States, and the functioning of the EU internal market.

By acting at EU level there is a possibility to build on good practices developed in some Member States, and to create a momentum for Member States to advance together towards better outcomes, supporting upwards convergence.

While the EU is working to increase fair labour mobility in Europe by removing barriers, the potential of labour mobility is not yet exploited in full. The EU could further

[92] See Annex 2 for a more complete account of social partners' opinions expressed in the two stages of consultation.

contribute to improving internal market mobility for (some categories of) workers and for businesses operating in different Member States.

Moreover, as highlighted in the Five Presidents' Report on Completing Europe's Economic and Monetary Union,[93] in a single currency area, there is a need to build up the shock absorption capacity and labour market adjustment mechanisms of Member States. Enhancing convergence towards robust labour market institutions and social infrastructure can facilitate resilience, social cohesion and macro-economic adjustment within the euro area and beyond.

The European Parliament, in its Resolution of January 2017, calls on the social partners and the Commission to present a proposal for a framework directive on decent working conditions in all forms of employment, extending existing minimum standards to new kinds of employment relationships, in order to improve enforcement of EU law, increase legal certainty across the single market and prevent discrimination by complementing existing EU law and ensuring for every worker a core set of enforceable rights, regardless of the type of contract or employment relationship.[94] Its request is for an instrument that guarantees workers' rights across a wide range of fields including equal treatment, health and safety protection, protection during maternity leave, provisions on working time and rest time, work-life balance, access to training, in-work support for people with disabilities, adequate information, consultation and participation rights, freedom of association and representation, collective bargaining and collective action.

The Parliament's request represents a highly ambitious approach to addressing the challenges set out in the problem definition section of this Impact Assessment. Indeed, it implies a revolutionary overhaul of the entire EU social acquis, bringing together into a single legal instrument the widest possible personal and material scope of rights, which would supersede the existing corpus of EU law.

While the Commission shares much of the Parliament's diagnosis of the challenges and recognises the need for new material rights for workers in the most precarious and vulnerable situations, who are often currently left outside the scope of protection of the current acquis, it takes the view that this does not require overhauling the entire acquis, and that a more proportionate approach lies in a more modest and targeted instrument, namely a revision and possible expansion of the Written Statement Directive. The obligation to provide written confirmation of the essential elements of an employment relationship is seen as a basic right that applies "regardless of the type of contract or

[93] "Completing Europe's Economic and Monetary Union", Report by Jean-Claude Juncker, in cooperation with Donald Tusk, Jeroen Dijsselbloem, Mario Draghi and Martin Schulz, June 2015.

[94] European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights (2016/2095(INI))

employment relationship", to use the wording of the Parliament's Resolution. Ensuring the removal of gaps in coverage of workers in marginal or currently excluded employment relationships is one of the key objectives of this proposed revision, along with an update in the contents of the information package. The creation of new material rights particularly for workers in precarious situations with little or no predictability of work schedules, addresses the essential element of the challenge highlighted by the Parliament, but by means of a complement to, rather than replacement, of the existing EU social acquis.

In its Opinion on the Commission's proposal for a European Pillar of Social Rights, the European Economic and Social Committee draws attention to the increasing diversity of types of employment and calls for the framework conditions in labour markets to support new and more diverse career paths, including through providing a suitable employment protection legislation environment to provide a framework for fair working conditions and to stimulate recruitment under all employment contracts.[95] In its Opinion, the Committee of the Regions states that the emergence of non-standard forms of work leads to new risks of "grey zones" in terms of labour rights and access to welfare and calls on the Commission to properly define flexibility in working conditions, so as to strike a balance between flexibility and security.[96] The Commission's analysis of the problem to be addressed by the proposed Directive is aligned with that of both institutions and the measures considered in this Impact Analysis and the preferred option follow the lines set out in their recommendations for action.

The Written Statement Directive

Since the entry into force of the Directive in 1991 and more recently as a result of the economic and financial crisis, diverging and/or precarious working conditions and insufficient protection of workers have been observed across the EU.

Currently, the Directive is not fully adequate and/or incomplete with respect to its scope, implementation or enforcement as not every worker can access the same basic rights everywhere, employers face unfair competition, and there is room for better prevention of undeclared work.

A change to the Directive can only be made at EU level.

EU action to revise the directive can work as a catalyst for a wider-scale improvement of the employment relationship:

[95] Opinion SOC/542 of the European Economic and Social Committee of 25.01.2017, paragraph 3.5.
[96] Committee of the Regions, Opinion on the European Pillar of Social Rights, adopted in plenary session 11 October 2017, paragraph 18.

- for workers, alleviating the 'burden of uncertainty' by providing enhanced workers' protection (access to information, enforcement mechanisms), less precariousness (security, predictability) or market segmentation (training and transition opportunities) and better mobility conditions;

- for businesses, creating a level playing field; better coherence and transparency across the labour market;

Member States and the society at large would gain from greater certainty and transparency in labour market functioning and enhanced social convergence.

Achieving our common goals by facing our common challenges: an initiative on the information and better protection of EU workers

Member States, the social partners and the EU institutions aim to use the European Pillar of Social Rights as a guide towards efficient employment and social outcomes in the context of current and future challenges, in order to fulfil people's essential needs, and ensure better enactment and implementation of social rights.

Making the Social Pillar a reality for citizens is a **joint responsibility**. It is in this framework of common agreement **on** the **need to find common solutions to common challenges that this initiative is developed.** It is one of the concrete tools that the Commission is putting forward to contribute to the delivery on the Pillar.

4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

A revised Written Statement Directive would contribute to the Treaty-based goals of promoting employment and improved living and working conditions (Article 151 TFEU). It would also address the rights set out in the Charter of Fundamental Rights of the European Union in relation to workers' right to information (Article 27) and their right to fair and just working conditions (Article 31).

The general objective of the revised Directive would be to promote more secure and predictable employment while ensuring labour market adaptability and improving living and working conditions.

It is appropriate to reflect both elements from Article 151 TFEU, as the goal of the revision is to secure improvements in working conditions, and thereby also the living conditions of workers and their families, while taking account of the need to promote employment and job creation and avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.[65]

These aspects are reflected in the **specific objectives** through which the general objective would be addressed:

(1) to improve workers' access to information concerning their working conditions;

(2) to improve working conditions for all workers, notably those in new and non-standard employment, while preserving scope for adaptability and for labour market innovation

(3) to improve compliance with working conditions standards through enhanced enforcement; and

(4) to improve transparency of the labour market while avoiding the imposition of excessive burdens on undertakings of all sizes.

5. WHAT ARE THE CONSIDERED POLICY MEASURES?

5.1 What is the baseline from which options are assessed?

Under the baseline scenario the Written Statement Directive continues to apply without any changes to its personal scope, to the content of the written statement, or to the deadline for providing the document to workers. No new basic rights for workers are introduced and the enforcement mechanisms remain unchanged.

Concerning **the scope**, the gaps in the coverage identified through the REFIT evaluation and in the context of the Social Pillar consultation, persist, leaving some groups of workers in some Member States without any written confirmation of their employment conditions and thus making them more vulnerable to abuse. In some cases, other initiatives or improved enforcement arrangements could partially address the gaps. For example, the European Quality Framework for Traineeships, recently complemented with a new proposal for a Framework for Quality and Effective Apprenticeships, could increase the proportion of paid trainees who receive a written statement. Overall, however, **the number of workers not covered by the provisions of the Written Statement Directive is likely to grow in the next 20-30 years, as the extent of new and non-standard forms of work is expected to increase** (see section 2).

As for **the content and the deadline** for the written statements, the effectiveness of the Directive would continue to be negatively affected in case of no revision. While a relatively high number of Member States have adopted a range of shorter deadlines than the maximum set out in the Directive, lack of legislative action at the EU level will make it difficult to fulfil the Social Pillar principle that workers across the EU get a written statement at the start of their employment.

Without the proposed revision of the Written Statement Directive, a **high level of insecurity in some jobs**, notably some new and non-standard jobs, would remain problematic across the EU. Insufficient access to cost-free mandatory training or opportunities to move on to more permanent jobs would persist. While new legislation and collective bargaining in some Member States could gradually improve conditions for

some groups of workers, the lack of EU minimum requirements would sustain and probably deepen divergences across the EU. Those would have a negative impact on equality of treatment for workers and potentially lead to distorted competition within the single market.

Finally, concerning the **enforcement**, under the baseline scenario the issues identified through the REFIT evaluation on obstacles to redress would persist, leading to insufficient protection of workers and undermined effectiveness of the Directive.

Under the baseline scenario it can be expected divergence between working conditions across the EU, if not divergence towards lower standards with long-term risks for the Union as a whole. As pointed in the European Parliament briefing of March 2017, the use of cheaper and more vulnerable temporary workers can be one of the sources of social dumping across and within Member States.[97]

5.2 Measures discarded at an early stage

Guidance, recommendations, benchmarks

The economic governance through the European Semester process is well suited to set out EU employment policy guidance in the area of labour market segmentation, but is not a process that can guarantee labour and social rights at the individual level in the Member States.

Stricter enforcement could improve the effectiveness of the existing Written Statement Directive as well as other elements of EU's social acquis. However, as shown in the REFIT evaluation, enforcement shortcomings are related to the lack of adequate mechanisms in the Directive. Also, enforcement would not address gaps in the social acquis e.g. with regard to predictability of work schedules.

Greater clarity on legal obligations and raising awareness of employers could also contribute to a better implementation of the Directive. To some extent, interpretative guidance (e.g. on the issue of blurred lines between employment and self-employment) could increase the clarity for employers and those tasked with enforcement such as inspectorates or labour courts. Such guidance could however not amend the personal scope of the Directive, would not address the existing exclusions from its scope, and also would not be an effective tool to introduce any new rights for workers.

The growth of new and non-standard forms of employment has resulted in groups of workers finding themselves excluded from the benefits of transparency on working conditions, and more generally from the scope of EU labour law, as it has up to now been

[97] http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599353/EPRS_BRI(2017)599353_EN.pdf

largely framed around the concept of the standard employment contract or relationship. Therefore, legislative changes appear to be the more adequate response to this fundamental challenge, particularly in respect of a transparency objective on working conditions that should apply to the widest concept of worker.

Discarded legislative options

As explained in the Section 3, the Commission took note of the Parliament's call for establishing a new framework directive on decent working conditions in all forms of employment but considered that at this stage a more proportionate approach lies in a more targeted instrument.

Indeed some of the actions proposed by the Parliament would have improved the protection of workers more, and more decisively challenged some of the issues raised in the problem description, specifically for workers in new and non-standard forms of employment. Nonetheless they would not have answered to the policy aim of reducing the risk of insufficient protection of workers while at the same time balancing necessary flexibility on the labour market.

Furthermore, the option of proceeding with a proposal centred on one type of employment relationship (for instance a directive on on-call or casual work) has been discarded. Indeed, the problem that this proposal aims to address relates to the multiplication of forms of employment relationships, some of which lack basic levels of protection of working conditions. The aim is to ensure a common minimum level of universal protection across existing and future contractual forms for which the provision of universal rights via a revised Written Statement Directive would be a more effective entry point than a dedicated legislative instrument targeted at a form of employment that may become superseded by the rapid pace of change on the labour market. This approach, in line with the universality of the Principles of the European Pillar of Social Rights, aims at ensuring that the provisions are future-proof, apply broadly and remain relevant also in case of future innovation in contractual forms.

The reasons for discarding other options are twofold. The first is the need to ensure that the cumulative effect of the different provisions does not create excessive burdens for employers or excessive rigidity on the labour market at this stage of its development. The importance of this consideration takes into account the diverging views of the social partners and the obligation in Article 153(2) TFEU to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings. The second reason relates to the Treaty basis, and the need to ensure that proposals not only respect EU competence, proportionality and subsidiarity, but also that they are consistent with the scope of Article 153(1)(b) on working conditions.

Taking into account these aspects, the Commission discarded some of the avenues of action reflected upon in its first stage social partners consultation document: a right to a reasonable notice period in case of dismissal/early termination of contract, to receive the reason for the dismissal and to adequate redress in case of unfair dismissal or unlawful termination of contract; and a right to guaranteed hours after a certain seniority with the same employer set at the average level of previous worked hours.

The rights relating to dismissal could indeed create an excessive burden if introduced together with other information and material rights. Additionally, they relate to another legal basis (Art 153(1)(d) requiring unanimity voting in Council. The avoidance of cumulative burden was the reason to exclude also the right to guaranteed hours.

Regarding training, the Commission initially considered introducing an obligation for employers to provide free of charge training necessary to enable workers to carry out the work for which they are employed. This was however considered as a disproportionate measure from the point of view of costs (which could amount to 1-4 billion EUR per year and be especially burdensome for SMEs) and lack of clarity on what constitutes training necessary for the job, which could lead to problems of transposition and implementation.

Additionally, for the same two types of reason, the Commission did not pursue certain proposals put forward during the consultation by the trade unions.

In exercising these considerations, the Commission addresses the need to balance essential protection for workers with the scope for job creation and labour market innovation.

Repeal of the Directive

A complete repeal of the Directive without replacement would leave it entirely to the Member States to determine what information a worker should receive about his or her employment relationship and to establish any new material rights. This scenario has been discarded at the outset as it could result in a wider divergence of worker protection across the EU as well as deterioration in existing rights to information and material protection, in complete contrast with the aim of supporting upwards convergence.

5.3 Considered policy measures

Given the drawbacks in the protection through the Written Statement Directive identified by the REFIT evaluation as well as the challenges related to labour market developments, the Commission is considering a range of legislative measures. Those measures will be combined into options presented as policy packages in Section 6). They are all aimed at promoting more secure and predictable employment while ensuring labour market adaptability and improving living and working conditions, to support upward convergence in working conditions across the Union.

Indeed, these measures aim at limiting unfair competition based on employment conditions, inside and across Member States. Building measures that allow common minimum social standards across both traditional and new business models seems central to set a level playing-field. This can support technological and organisational innovation within a common regulatory framework, and limit competition on the basis of social standards. Only the first is a sustainable long-term strategy to support a more productive economy and fairer Union.

Measure one relates to ensuring a scope of application encompassing all EU workers, in particular the most precarious.

The proposed measure aims to extend the scope of the Directive by removing the exclusions now allowed under the Written Statement Directive (sub-measures 1 to 3) and codifying criteria derived from CJEU case-law for establishing who a worker is for the purpose of the Directive (sub-measure 4). This is in line with the suggestions of the REFIT evaluation, and with requests of the European Parliament.

Indeed, the Parliament called for a proposal for decent working conditions in all forms of employment, extending existing minimum standards to new kinds of employment relationships, that increases legal certainty and ensuring for every worker a core set of enforceable rights, regardless of the type of contract or employment relationship, that should apply to employees and all workers in non-standard forms of employment. The Parliament called as well for broadening the Written Statement Directive to cover all forms of employment and employment relationships. Additionally, it pointed to the need to support, for the purpose of EU law and without prejudice to national law, clarification to distinguish between those genuinely self-employed and those in an employment relationship.

Introducing a set of common criteria to assess who is a worker for the scope of the directive would ensure equal treatment of workers in the EU and combat the exclusion from basic protection of people undertaking economic activities that might not be recognised as work at national level (as in some cases casual workers including zero-hour contract workers). This will support the goal of increasing legal certainty and ensuring for every worker a core set of enforceable rights, regardless of the type of contract or employment relationship. Indeed, the measure would facilitate identification of bogus self-employed people and their inclusion under the scope of the Directive in the sense that it would clarify which criteria should be applied to establish worker status. Strengthened enforcement provisions under measure 5 would provide an avenue for those potentially falsely labelled self-employed to establish their correct status and the protection that comes with it.

To facilitate the implementation of the Directive, the proposal permits Member States to provide that very short relationships fall outside scope of the Directive[98] by including a threshold of up to 8h per month (sub-measure 1.5.). This aims at bringing within scope of the obligations established by this Directive employment relationships that are of extremely marginal nature and where the protections set out in the Directive could be disproportionate. It will be for Member States to determine, in the light of national circumstances and traditions, whether to introduce such an exclusion from personal scope. Nonetheless, due to the unpredictability of on-demand work including zero-hour contracts, the derogation of 8 hours per month cannot be used where no guaranteed amount of paid work is determined before the start of the employment relationship. This would ensure that workers on zero-hours contracts effectively gain the right to information about essential elements of their working relationship as well as the other rights established in the Directive.

Measure two relates to ensuring a right to information on the applicable working conditions.

This measure updates Article 2 of the Written Statement Directive, taking into account the deficiencies identified by the REFIT evaluation and the inputs from Social Partners during the first and second phase consultations by introducing new elements relating to duration and conditions of probation (sub-measure 1), training entitlements (sub-measure 2), better information on procedures for the termination of contracts (sub-measure 3), arrangements for overtime and its remuneration (sub-measure 4), key information about the determination of variable working schedules, to take account of the increasing prevalance of such types of work organisation such as casual or zero-hours contracts (sub-measure 5 to 7), information about the social security institutions receiving the social contributions and and any social security protection provided by the employer (sub-measure 8), and updating some information relating to expatriate and posted workers (sub-measure 10).

The REFIT evaluation drew attention to the practice in several Member States of providing a template to employers in order to reduce the burden of producing the written statement, and suggested that such a template could be produced at EU level. While the Commission does not consider it appropriate to produce a *single* template intended to apply in all Member State jurisdictions, given the diversity of systems and approaches for which it would have to provide, it considers it would be helpful both to employers and to workers, not only as a way of reducing the burden of compliance for employers but also of improving the quality and consistency of information provided to workers. The

[98] In the calculations of the CBA it is assumed conservatively only the removal of current exclusions not knowing which MSs will adopt the new threshold. This derogation does not apply to an employment relationship where no guaranteed amount of paid work is predetermined before the employment starts.

provision of such templates by Member States would be mandatory (sub-measure 9). Member States would also be obliged to ensure ease of access for employers to the information provided for in laws, regulations, statutory provisions or collective agreements which they must communicate in the written statement.

All of the above would increase transparency and reduce the information disparity between an employer and a worker.

Measure three relates to shortening of the two-month deadline for providing the written information to at the latest on the first day of the employment relationship

This measure replaces the current maximum timeframe of 2 months for provision of a written statement set out in Article 3 of Directive 91/533/EEC with the first day of the employment relationship, in line with Principle 7 of the European Pillar of Social Rights and in coherence with the REFIT finding that the previous timeframe was excessive.

Measure four provides for new minimum rights for all workers.

As shown in the problem definition, while labour market flexibility is an important driver for job creation and growth, extreme flexibility of individual work arrangements without protection of basic standards for workers has created situations which can jeopardise working and living conditions, equal treatment, fair competition between employers across the EU and overall social cohesion and equity.

Indeed, as the Parliament called for, it is necessary to complement existing EU law and ensure a core set of enforceable rights for every worker, regardless of the type of contract or employment relationship. While it was already explained why it is not considered appropriate to put forward all the rights suggested by the Parliament in a single piece of new legislation, some elements suggested seem to be of central importance to address the problems described in Section 2; this includes provisions to combat the risk of workers being trapped in insecure contracts without a tangible prospect of transitions to more permanent jobs, and provisions to support access to training and to introduce limits regarding on-demand work. Additionally, some proposals aim at supporting predictability in line with the call from the Parliament to support equal treatment, working time and rest time, health and safety protection and work-life balance.

A minimum common level of predictability (sub-measure 1) can prove extremely important for living and working conditions, work-life balance and health of workers without a fixed schedule, including on-demand work and zero-hour contract workers. As presented in the problem definition, workers in lower-level occupations are in particular less likely to have the bargaining power to negotiate their working schedules, or more likely to have no autonomy or control over their schedules.

This new right could include two elements:

- Right to reference days and hours within which work can take place:

This measure provides that the employers must notify workers of the periods of hours and days within which they may be requested to work –e.g. Monday to Friday between 0800 and 1300. That would enable workers to make arrangements to use the time not covered by such reference hours/days, for instance in other employment or to fulfil care obligations.

Workers may agree to work outside the reference hours and days, but could not be obliged to do so, and must not be subject to detriment if they refuse.

- Right to a reasonable advance notice before a new work assignment:

This measure provides that workers cannot be required to take up a work assignment if they do not receive reasonable advance notice from their employer. They may agree to do so but must not be subject to detriment if they refuse.

This right to predictability is relevant for workers whose work schedule is mainly variable and mainly determined by their employer and is therefore limited in scope to such situations, to avoid restricting workers' autonomy to determine their work schedule, where this is possible within their employment relationship.

In addition, for all workers, it is important to ensure that they can seek employment in line with their wishes, ambitions and availability. Indeed, the practice of including in contracts exclusivity clauses (which prevent workers from taking on other work at all, no matter what the type of employer), or incompatibility clauses (which impede workers from taking on work with certain other employers), can put a disproportionate burden on workers and restrict their freedom to increase their work intensity. Particularly if not employed full-time, workers are put in a situation where they cannot freely seek greater income security and stability, or even avoid poverty. In economic terms, exclusivity and incompatibility clauses exacerbate situations of underemployment. Sub-measure 2 therefore provides for a prohibition of exclusivity clauses and a restriction on incompatibility clauses to when they are justified by legitimate reasons.

Sub-measures 1 and 2 respond to the Parliament's request to limit on-demand work; sub-measure 3 responds to its call to combat the danger of people being trapped in insecure contracts without a tangible prospect of transition to more permanent forms of employment. Indeed, sub-measure 3 would provide for a possibility to request a more predictable and secure form of employment, where available, after achieving a certain degree of seniority with their employer, and to receive a reply in writing. This could ease the transition from extremely flexible forms of non-standard work to other forms of work (e.g. full time work).

Sub-measure 4 responds to the need for security and predictability in the framework of the increased number of transitions between jobs and professions. While longer

probationary periods have often been used in the perspective of entering very long and stable employment relationship, this approach becomes less appropriate in view of a life-time of changes of jobs. Workers risk spending considerable amounts of time during their career in a situation of unpredictability in terms of job security. It is proposed therefore to limit probation, where it exists, to 6 months maximum, unless a longer duration is justified by the nature of the employment, such as managerial positions, or where this is in the worker's interest, such as when he or she has been prevented by illness from fulfilling the original probationary period fully and would otherwise face dismissal.

Finally, sub-measure 5 responds to the need of ensuring equal access to training. According to this provision Member States shall ensure that employers provide cost-free training recognised as being necessary in EU legislation, national legislation and in relevant collective agreements to enable workers to carry out the work for which they are employed.

Finally, measure five provides for revised enforcement provisions.

Rights are only meaningful when they are taken up by right-holders. Both the REFIT evaluation of the Written Statement Directive, and the public consultation on the European Pillar of Social Rights, have underlined the importance of enforcement mechanisms to ensure workers' rights are respected and EU law is effective. This has also been underlined by the recent Commission Communication on better application of EU law.[99]

Sub-measures 1 to 3 follow from the findings of REFIT and apply to incompliance with the obligation to provide information on the employment relationship.

The REFIT evaluation of the Written Statement Directive indicated that enforcement of workers' rights under the Directive could be improved by rethinking means of redress and sanctions for non-compliance.[100] It also concluded that redress systems based only on claims for damages are less effective than systems that also provide for sanctions such as lump sum penalties. The limited extent of case law indicates that workers whose rights under the Directive have been infringed are reluctant to pursue litigation while in employment. Generally any litigation is related to the working conditions themselves, and not to the absence of information about them.

Indeed under under sub-measure 1, Member States are to make sure that a 'competent authority' can find or impose a solution in case a worker does not receive a written statement. This could combine with sub-measure 2 to set up an injunction system, backed up with the possiblity to issue penalties.

[99] *EU law: Better results through better application,* C(2016)8600.
[100] SWD (2017)205, page 3,4.

In almost a third of the Member States the only available means for redress in case of lack of written statement is litigation before civil or labour courts, which was considered under REFIT particularly ineffective as means of enforcement when the only available remedy is the award of damages.

Alternatively, under sub-measure 3 Member States may establish favourable presumptions for the employees as regards their working conditions in case of (unlawful) absence of written statements (proportionate to the missing elements). This is to include for instance presumption of permanent employment relationship. Employers would have the possibility to rebut the presumption.

It is suggested that Member States consider sub-measures 1+2, and 3, as alternative.

In relation to the new basic rights, sub-measure 4 aims at ensuring their enforcement. Indeed, one of the conclusions of the public consultation on the European Pillar of Social Rights[101] was that, very often, citizens are deprived of their rights due to a lack of implementation and enforcement. In the context of EU labour law, unlike in other areas, there are very few EU rules directly concerned with enforcement of rights. Experts highlighted various ways to close the enforcement gap. It was proposed to ensure that legislation in the field of labour law contains procedural provisions for enforcement, such as provisions improving access to justice, supporting persons whose rights have been denied to initiate litigation, protecting against victimisation and providing for basic rules on remedies and dissemination of information. It was pointed out that inspiration could be drawn from existing instruments e.g. in the field on non-discrimination or free movement, where a range of enforcement tools have been adopted in recent years. Others asked for more and better labour inspections.

Sub-measure 4 would enlarge the enforcement provisions of the revised Directive based on enforcement provisions already in place under EU anti-discrimination and gender equality law, and included in the new proposal for a Directive on Work-Life Balance.

Indeed, following the evolution of the EU acquis and case-law in the field of gender equality and antidiscrimination in the last 30 years, now all Member States have put in place enforcement provisions that apply to the interaction between worker and employer. This includes provisions on defense of rights, burden of proof, compensation or reparation, protection against adverse treatment or victimisation, penalties, compliance and dissemination of information.[102] This corpus of enforcement provisions has

[101] Delivering on the European Pillar of Social Rights, http://ec.europa.eu/social/main.jsp?catId=1226&langId=en , and Public consultation on the European Pillar of Social Rights http://ec.europa.eu/social/main.jsp?catId=333&langId=en&consultId=22&visib=0&furtherConsult=yes

[102] Existing provisions on Defence of Rights are Art. 17 of the Gender Recast Directive Dir. 2006/54, Art 7 of the Race Equality Directive 2000/43, Art. 9 of the Employment Equality Directive 2000/78.On Burden

developed via legislative action and case-law to ensure the effectiveness of social acquis relating to equal treatment. Workers, employers, public authorities, social partners, labour courts have experience in applying these procedural elements – in all Member States in equal treatment, and in many cases in other areas of labour law beyond equal treatment. This acquis offers an extensive system that can be used to ensure the effectiveness of the rights provided for also in this Directive.

In particular, providing a shared burden of proof in case of dismissal[103] due to the exercise of rights provided for under the proposed Directive would help counter unbalanced access to information between worker and employer that is one of the factors addressed by the proposed Directive. The first proposal for a Directive on burden of proof was already adopted in 1988, with key CJEU judgments on the matter since 1989[104], and the first Directive agreed upon in 1997[105] with the assessment that "plaintiffs could be deprived of any effective means of enforcing the principle (of equal treatment) before the national courts if the effect of introducing evidence (of an apparent discrimination) were not to impose upon the respondent the burden of proving that his practice is not in fact discriminatory"[106]. This reasoning is transposable to the need for effective means of enforcing the rights provided for in the proposed Directive, in a comparable situation where information on the reasons for employers' actions rests solely with the employers. This is already in place, beyond equal treatment, at least partially in 21 Member States.

Furthermore, it is important to provide that workers are protected against adverse treatment by the employer as a reaction to a complaint or to any legal proceedings aimed at enforcing compliance with the Directive. This principle has been present in the equal

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of Proof: Art 19 of Dir. 2006/54, Art. 8 of Dir 2000/43, Art. 10 of Dir. 2000/78. On Compensation or reparation Art. 18 of Dir. 2006/54, aspects of Art. 15 of Dir. 2000/43, aspects of Art. 17 of Dir. 2000/78. On Protection against adverse treatment or consequences /Victimisation: Art 24 of Dir. 2006/54, Art. 9 of Dir. 2000/43, Art. 11 of Dir. 2000/78. On Penalties Art 25 of Dir. 2006/54, partially Art. 15 of Dir. 2000/43, aspects of Art. 17 of Dir. 2000/78. On Compliance Art 23 of Dir. 2006/54, Art. 14 of Dir. 2000/43, Art. 16 of Dir. 2000/78. On Dissemination of information- as Art 30 of Dir. 2006/54, Art. 10 of Dir. 2000/43, Art. 12 of Dir. 2000/78 .

[103] Or equivalent, such as ceasing to offer work to an on-demand worker without formally terminating the employment relationship.

[104] C-109/88 Danfoss para 14: "the concern for effectiveness which thus underlined the directive means that it must be interpreted as implying adjustments to national rules on the burden of proof in special cases where such adjustments are necessary for the effective implementation of the principle of equality" confirmed and further elaborated also before the 1997 Directive in Enderby C-127/92, Royal Copenhagen C-400/93.

[105] Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex

[106] Recital 17, Directive 97/80/EC

treatment acquis since 2000[107] as "effective legal protection must include protection against retaliation. Victims may be deterred from exercising their rights due to the risk of retaliation. Since fear of dismissal, for example, is generally one of the major obstacles to individual action, it is necessary to protect individuals against dismissal or other adverse treatment (for instance down-grading or any other coercive measures due to such action)"[108] The reasoning is transposable to the need for protection against retaliation for requesting e.g. another form of work, or the respect of reference hours and notice periods. It seems particularly important to ensure protection against detriment in particular for on-demand work, where the standard protections against unfair dismissal often are difficult to apply. This principle is already at least partially in place, beyond the sphere of equal treatment, in 23 Member States either for all matters concerning with labour law, or for specific provisions generally including dismissal.

The table below presents more detailed information on the formulation of the considered measures, as well as populations and Member States potentially affected by their possible introduction. Annex 8 provides further information, including examples of Member State approaches which provided a basis for the new minimum rights and the enforcement measures. To be noted that the impact of the considered measures could also vary depending on the extent that some of the rights are already established through collective agreements or practice. The provisions of major relevant collective agreements have been taken into account in the analysis (see section 7 of Annex 8).

Table 2. Overview of policy measures under consideration[109]

Description of measure	**Population affected**	**Number of Member States where legal changes would be required**
1. A scope of application encompassing all EU workers, in particular the most precarious		
Removing the possibilities under the existing Directive to exclude: *1.1: people working less than 8h/week* *1.2: people whose employment relationship will last less than 1 month* *1.3: people having a contract or employment relationship of a casual or specific nature*	**2-3 million workers**	Inclusion of workers working less than 8h/week: **4 MS** (CY, DK, MT, SE). Inclusion of workers employed for less than 1 month: **13-14**

[107] Council Directive 2000/43/EC of 29 June 2000 on equal treatment irrespective of racial or ethnic origin, then Directive 2002/73 on gender equality then recast in Directive 2006/54 recast.

[108] Explanatory memorandum accompanying the proposal for Directive then become Council Directive 2000/43/EC COM(1999)566.

[109] In the impact assessment each measure is considered as including the whole set of sub-measures and including any clarifications or derogations as described in the table.

provided that its non-application is justified by objective considerations *Confirming/ensuring that the Directive covers any* 'natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration'.[110] The Directive would apply to e.g. domestic workers, on-demand, intermittent, voucher-based and platform workers, as long as they fulfil the criteria. A threshold of a work relationship of up to 8h working hours per month would replace the removed exclusions (1.1-1.3) to permit Member States to provide that isolated very short relationships fall outside scope of the Directive.[111] This threshold shall not apply to an employment relationship where no guaranteed amount of paid work is predetermined before the employment starts. Where work is performed for a household, Member States may consider that natural persons belonging to this household are not subject to employers' duties for the purposes of responding to a request for a new form of employment, the right to mandatory training, and are not subject to redress based on favourable presumptions.		**MS** (AT, CY, CZ, DK, FI, DE, EL, IE, LT, MT, SK, ES, UK, possibly SE) Impact on other types of non-standard forms of employment in a **number of other MS** (see table 1 in section 2.2.1 on legal situation regarding different types of worker per MS).
2. A right to information on the applicable working conditions		
Informing about: *2.1 the duration and conditions of the **probationary period**, if any;* *2.2. the **training entitlement**, if any, provided by the employer;*	**5-31**m benefitting in practice (new recruits)[112]	**Introducing information on:** - **probationary period: 7 MS (**AT,

[110] These criteria are based on the jurisprudence of CJEU as developed since case Lawrie-Blum, C-66/85, and most recently stated in C-216/15 Ruhrlandklinik.

[111] The cost-benefit calculations assume conservatively only the removal of current exclusions not knowing which Member States will adopt the new threshold. This derogation does not apply to an employment relationship where no guaranteed amount of paid work is predetermined before the employment starts.

[112] Number depends on the specific element of information. In addition, 4.6m-9.3m additional employees starting a job could receive information about duration and conditions of probation periods, and 15.3m-30.7m additional employees p.a. leaving a job could receive information about national law applicable in case of termination

*2.3. information on the procedure to be observed by the employer and the worker should their contract or **employment relationship be terminated** including the length of the period of notice to be observed 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; (beyond the already present information on the length of the periods of notice)* *2.4. if the work schedule is entirely or mostly not variable, the **standard working day or week** and any arrangements on **overtime and its remuneration**;* *2.5. if the work schedule is entirely or mostly variable, the principle that the work schedule is variable, the amount of **guaranteed paid hours**, the remuneration of work performed in addition to the guaranteed hours and, if the work schedule is mostly determined, directly or indirectly, by the employer: (2.6.) the **reference hours and days** within which the worker may be required to work; (2.7.) the minimum **advance notice** the worker shall receive before the start of a work assignment; 2.8. the **social security** institution(s) receiving the social contributions attached to the employment relationship and any protection relating to social security provided by the employer.* *2.9. Requiring Member States to develop, where this is not already the case, **on-line standard 'Written Statement Models' or templates**.* *2.10. Additional elements of information are required for posted workers.*		BE, DK, HR, IE, SE, UK) - **social security**: **19 MS** (AT, BE, BG, CZ, DK, EE, FI, HR, HU, IE, IT, LT, LU, MT, PL, RO, SE, SI, SK) - **national law applicable in case of termination of contract**: **24 MS** (BE, BG, CZ, DE, DK, EE, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK) - **precise working time**: **19 MS** (AT, BE, BG, DE, DK, EE, ES, FI, FR, HR, IT, MT, NL, PL, PT, RO, SE, SI, SK) **Introducing templates: 13 MS** (BE, BG, CZ, DE, DK, IT, HR, HU, NL, PT, SE, SI, SK)
3. Shortening of the two-month deadline to the same day or before		
3. Shortening the deadline from 2 months to at the latest on the first day of the employment relationship. This measure replaces the current maximum timeframe of 2 months for provision of a written statement set out in Article 3 of Directive 91/533/EEC with the first day of the	**8-16 m** workers per year could benefit in practice from this right.	**14 MS:** - HU (currently 15 days) -CY, CZ, DE, DK, FI, NL, SE, SK (currently 1 month) - EL, ES, IE, PT, UK (currently 2 months)

employment relationship.[113] In order to avoid situations where failure to provide the written statement on the first day could lead to the automatic triggering of legal presumptions, Member States may establish that a legal presumption or administrative procedure is subject to the notification of the employer and the failure by the employer to rectify the omission within 15 days of notification.		
4. New minimum rights for all workers		
4.1: Right to ***greater predictability of work*** *for workers whose work schedule is entirely or mostly variable and entirely or mostly determined by the employer consisting of:* *- Right to be required to work only if it takes place within predefined* ***reference days and hours*** *established in writing* *- Right to be required to work only if* ***informed of a work assignment a reasonable period in advance*** ***Reference days and hours*** This measure provides the employers must notify workers of the periods of hours and days within which they may be requested to work – e.g. Monday to Friday between 0800 and 1300. That would enable workers to make arrangements to use the time not covered by such reference hours/days, for instance in other employment or to fulfil care obligations. Workers may agree to work outside the reference hours and days, but could not be obliged to do so, and must not be subject to detriment if they refuse. ***Reasonable advance notice*** This measure provides that workers cannot be required to take up a work assignment if they do not receive reasonable advance notice from their employer. They may agree to do so but	***Reference days and hours:*** **4-6 million** casual and voucher-based workers. ***Minimum advance notice:*** **5-6 million** casual and voucher-based workers.	***Reference days and hours:*** **21 MS** (the right exists in BE, HR, DK, EL; in AT, LV, LT on demand work is prohibited) ***Minimum advance notice:*** **17-18 MS** (the right exists in DK, DE, HU, IT, SL, ES, SE, and partially PT – for intermittent only; in AT, LV, LT on demand work is prohibited)

[113] In line with Principle 7 of the European Pillar of Social Rights referred to above

must not be subject to detriment if they refuse.		
4.2 Prohibition of exclusivity clauses This measure provides that employers may not prohibit workers from taking up employment with other employers outside the work schedule established with the first employer (so-called exclusivity clauses). They may not introduce incompatibility clauses (which restrict taking up employment with specific types of employers as e.g. competitors) unless this is justified by legitimate reasons such as the protection of business secrets or the avoidance of conflicts of interest.	**0.5-1.5 million** casual and voucher based workers.[114]	**24 MS**, but to a different extent: Exclusivity clauses are - fully allowed AT, HR, LT, LU, FR, MT, SE - allowed under certain conditions: AT, CZ, EL, HU, PT, BE, LV, SK, ES, FI, IE, IT, NL, UK - prohibited but with exceptions: DE, PL, SI, CY, RO
4.3: Possibility to request transfer to another form of employment and receive a reply in writing This proposal establishes a possibility to request from employers a more predictable and secure form of employment, where available: a more secure form of work for workers working part-time and wishing to transition to full-time, or for workers with no or few guaranteed paid hours per week or months and wishing to be able to rely on a higher number of guaranteed paid hours and for workers desiring to agree on a less variable work schedule. Employers are required to respond in writing within one month. In micro, small, or medium enterprises, Member States may provide for this deadline to be extended to no more than three months and/or allow for an oral reply to a subsequent similar request submitted by the same worker if the justification for the reply as regards the	53% of fixed-term workers in Europe would prefer a permanent contract.[115] This suggests that **up to 14m** fixed-term workers might wish to make use of this right**.** **9.5m** part-time workers currently work fewer hours than they would like.	**13 MS** (AT, BE, CZ, DK, EE, FI, HU, IT, LV, MT, PL, SE, SK)

[114] 29% of part-timers in 2015 were involuntary (source EU-LFS). It can be assumed that most of the involuntary part-timers work less that they would want to because of lack of job opportunities rather than exclusivity clauses, but exclusivity clauses are a contributory factor for involuntary part-time.

[115] European Commission (2017), Employment and Social Developments in Europe 2017

situation of the worker remains unchanged.		
4.4: Right to a maximum duration of probation period This provision sets a maximum duration of six months for any probation period, unless a longer duration is justified by the nature of the employment, such as a managerial position. A substantial number of Member States have established a general maximum duration for probation periods which largely varies between three and six months. Some apply derogations to managerial positions which often are double the standard probation period.	**3-6 million** in IE and UK. The number that would benefit might however be much lower due to legal arguments or precedents that limit the duration in practice in those MS (estimation at 0.5-1.5 million per year).	**2 MS** (IE, UK)
4.5. Right to cost free mandatory training According to this provision Member States shall ensure that, where employers are required in EU legislation, national legislation and in relevant collective agreements to provide the training recognised as being necessary to enable workers to carry out the work for which they are employed, such training shall be provided cost-free to the worker .	The right would cover **all 200m employees** in the EU. In practice, only those whose employers do not comply with otherwise existing obligations would benefit.	At EU level, obligation to provide training is established e.g. in the Directive 89/391/EEC (safety and health of workers at work) and related specific safety and health directives, some directives/regulations in the area of transport, feed and food law, money laundering, renewable energy. Obligations are either put directly on employers or left to Member States to establish who is responsible for the delivery and cost of training.
5. Enforcement		
5. Requiring Member States to:	The right would cover **all 200m**	Most Member States have

Legal presumption and early settlement mechanism *-5.1: make sure that a 'competent authority' can find or impose a solution in case a worker does not receive a written statement;* *-5.2: set up an injunction system accompanied by a possibility of a penalty;* *-5.3: establish favourable presumptions for the employees as regards their working conditions in case of (unlawful) absence of written statements (proportionate to the missing elements).* *5.4. enlarge the enforcement provisions of the revised Directive based on enforcement provisions already in place under EU anti-discrimination and gender equality law* *5.1 to 5.3: Legal presumption and early settlement mechanism* This provision provides for two alternative avenues of redress for failure to provide all or some of the written information, either (i) the use of favourable presumptions proportionate to the missing information, including at least presumption of open-ended relationship if no information is provided about the duration of the employment relationship, a presumption of full-time position if no information is provided on the amount of guaranteed paid hours, and a presumption of absence of probation period where no information is provided on the existence and the duration of a probation period; or (ii) access to an administrative procedure under which a competent authority (which may be an existing body such as a labour inspectorate or a judicial body) has the authority to establish the facts of the case, to order the employer to issue the missing information, and to impose a fine if this is not done. This provision addresses the weakness in the existing	**employees** in the EU[117]. In practice, those whose rights are not respected could benefit.	provided for means of redress *judicial process* either in civil courts or special labour courts. In several Member States *labour inspectorates* have a monitoring and/or enforcement responsibility. In almost a third of the Member States the only available means for redress are civil or labour courts, which are considered particularly ineffective as means of enforcement when the only available remedy are damages. In **10 MSs[118]** there is no competent authority that can impose a solution in case of lack of WS. In **14 MS[119]** there is no formal injunction system with lump sum in case of lack of WS. In **22 MSs[120]** in case of (unlawful) absence of written statements, there are no favourable presumptions made

[117] unless otherwise excluded from the scope of the Directive

[118] AT, BE, DE, FR, HR, LU, NL, SE, SL, UK

[119] AT, BG, CZ, DE, FI, FR, LU, LV, NL, PT, RO, SE, SL, UK

[120] AT, BG, CY, CZ, DK, EL, ES, FI, FR, HR, HU, IE, IT, LT, MT, NL, PL, PT, RO, SE, SK, UK

mechanisms identified in the REFIT evaluation, by which redress systems based on claims for damages are less effective than those based on other forms of penalty such as lump-sums.[116] *5.4:* An extensive system of enforcement for the EU social acquis has built up since the adoption of Directive 1991/533/EEC, notably in the field of anti-discrimination and equal opportunities legislation, which it is appropriate to apply to the new material rights. This includes provisions on: -Right to redress -Protection against adverse treatment or consequences - Burden of proof in cases of dismissal resulting from an attempt to exercise rights provided for in the directive - Penalties		for the employees as regards their working conditions. **All 28 Member States have in place** enforcement provisions that apply to the interaction between worker and employer in the field of gender equality and antidiscrimination.

6. WHAT ARE THE POLICY OPTIONS AND THEIR IMPACTS?

6.1 Options: Four policy packages

For the sake of assessing impacts as well as for comparing effectiveness, efficiency and coherence, the individual policy measures presented in the previous chapter are combined into **"policy packages"**. The policy packages represent different configurations of measures, which when put together have different impacts than if they were to be considered in isolation. While many other combinations of measures are theoretically possible, the policy packages above represent the most logical sets of proposals.

The strengthened requirements (measures 2 - extension of the content of the written statements, and 3 - shortening the deadline for their provision to workers) are part of each of the options as those consequences of REFIT are the most modest modifications of the Directive, and could be combined with any more substantial change. Improved enforcement (measure 5) also stems largely from the findings of REFIT about the

[116] The workers that would benefit from it in practice are expected to be mainly the workers in a new job - a range estimate based on a low rate of turnover (10%) and a high rate (20%): is 18-36m. EWCS showed that only 40% of EU workers receive training in the survey year – this shows that potentially 60% of new hires could benefit from the right

[116] SWD(2017)205 final, page 26.

weaknesses of the current redress mechanisms, and takes account of provisions adopted in the EU social acquis since 1991. While limiting the modification to only those elements would not justify a launch of a legislative process and would not address the objectives set out in the Pillar, it is appropriate to include in all packages the provisions addressing the REFIT outcomes.

Policy packages
A. Baseline: no change B. Extended scope and strengthened requirements (measures 1, 2, 3, 5) C. Strengthened requirements and minimum rights (measures 2, 3, 4, 5) D. Extended scope, strengthened requirements and minimum rights (measures 1, 2, 3, 4, 5)

Policy package A is the baseline scenario, as described in the section 5.1.

Policy package B consists, in addition to the REFIT measures common to B, C and D, of extending scope of the application of the Directive: existing exceptions would be removed and replaced with a much lower threshold, and new and non-standard forms of employment would be better covered. In addition, a revised Directive would follow the suggestions of the REFIT evaluation (extension of the content of the written statements, shortening the deadline for their provision to workers, improved enforcement). No substantial new rights aimed at increasing job predictability and security would however be created.

In **policy package C** the common REFIT suggestions would be followed and in addition new rights for workers would be added to the directive (rights related to predictability of work, maximum length of probation, possibility to request another form of employment, right to cost-free training which employers are required in EU legislation, national legislation and in relevant collective agreements to provide to workers). The scope of the Directive would remain unchanged.

It is important to note that, without the modification of the scope, the policy package C does not address the problem definition, which establishes that the new initiative should apply to all workers. This policy package is nevertheless analysed in order to examine what the impact of the new rights would be if the scope of the Directive remained unchanged and some 2-3 million workers in total (notably those in new and non-standard forms of work, including casual workers, workers on very short contracts or working less than 8 hours per week) would continue to be excluded from the provisions of the Directive.

Policy package D is a combination of the previous two. It extends the personal scope of the Directive, introduces changes suggested through the REFIT and creates new basic rights which in this scenario apply to the extended population of workers, including those in new and non-standard forms of work.

6.2 Impacts of the options

This section presents an overview of main social, economic and legal impacts associated with each policy package.[121] Impacts are grouped in three categories: (a) impacts on workers and working conditions, (b) impacts on employers, including competitiveness and productivity, (c) broader impacts (on labour markets, public finances, application and enforcement, fundamental rights). No relevant environmental impacts could be identified.

The analysis is based mainly on results of a dedicated external study.[122] Annex 4 presents an outline of the methodology underpinning the determination of effects, calculation of costs and benefits as well as development of the multicriteria analysis for comparing effectiveness, efficiency and coherence of the options. Other sources of data include the REFIT study of the Written Statement Directive, information provided by the European Labour Law Network, as well as own analysis of data produced by the Eurostat and the Eurofound.

Where quantification was possible, numbers and values are sometimes presented as broad ranges. This reflects uncertainties about existing data (notably concerning prevalence of new and non-standard forms of work, undeclared work), as well as outcomes of sensitivity analysis and ranges of assumptions applied (e.g. on the staff turnover).

A. Main impacts on workers and working conditions (social impacts)

	A	**B**	**C**	**D**
Costs	Growing number of workers without protection of the right to a written statement (WS) and increasing skills and working conditions inequality	No direct costs. Social security and/or pension contributions for some workers who were undeclared or bogus self-employed. Very limited possibility for some workers to become unemployed.	No direct costs. Very limited possibility for some workers to become unemployed.	No direct costs Social security and/or pension contributions for some workers who were undeclared or bogus self-employed. Very limited possibility for some workers to become unemployed.
Ben	No change.	Some 2-3m more	No increase in	As in option B.

[121] A more detailed overview of different impacts for policy packages B, C and D is provided in Annex 9.
[122] "Study to support Impact Assessment on the Review of the Written Statement Directive" by CSES and PPMI.

efits		workers have a right to a WS 5-31m additional workers having new elements of information in practice[123] 45m additional employees having new right to information about working time will reduce involuntary/inadvertent overtime 8-16m per year additional employees starting a job having new right to receive a WS on the 1st day of employment or before Fewer people in bogus self-employment and in activities not protected as work. Better understanding and protection of rights; increased legal clarity; better access to social security protection Reduced abuse of workers. More employees receiving essential	number of workers having right to a written statement. Gradual reduction in the proportion of workers covered by the Directive. 3-4m workers get rights to predictability 52m workers get possibility to request a new form of employment. 3-6 million in IE and UK get right to max. duration of probation. (in practice 0.5-1.5 m could benefit) The right would cover all 200m employees in the EU. In practice, only those whose employers do not comply with otherwise existing obligations would benefit. The most vulnerable workers remain outside the scope of the directive.	In addition:[124] 4-6m additional workers get right to reference hours 5-7m get right to min. advance notice period 0.5-1.5m freed from exclusivity clauses Also: 55m get possibility to request a new form of employment – in practice 14m fixed-term workers might use the possibility to request a new form of employment 3-6 million in IE and UK get right to max. duration of probation (in practice 0.5-1.5 m could benefit). 200m employees in the EU get the right to mandatory training. In practice, only those whose employers do not comply with otherwise existing obligations would benefit. Fewer people in bogus self-employment and in activities not protected as work.

[123] Number depends on the specific element of information. In addition, 4.6m-9.3m additional employees starting a job could receive information about duration and conditions of probation periods, and 15.3m-30.7m additional employees p.a. leaving a job could receive information about national law applicable in case of termination

[124] For the four points below, based only on the population of casual and voucher-based workers.

		information about conditions pertaining to any periods of work abroad.		Improvement in work-life balance due to reference hours and notice.

In the three substantial options (B, C and D) there will be benefits associated with the common measures: the shortened deadline, the more complete information package as well as the improved enforcement mechanisms. Those measures alone should result in non-quantifiable benefits such as increased clarity and better protection of working conditions.

In option B and D the scope of the Directive is also expanded. This has a significant effect on the number of workers who can enjoy the protection of the Directive. It is assumed that some 450,000 employees working <8 hours per week and 650,000 employees with contract duration of <1 month would fall under the scope of the directive. The same would be true for some workers in other forms of non-standard employment, mainly casual workers and voucher-based workers,[125] bringing the total to some 2-3 million workers coming newly within scope. It should be noted that the types of worker who will mostly benefit are less likely to be covered by collective agreements. According to the REFIT study, such workers are more likely to be vulnerable, such as migrant workers or young people.

In Option C and D, new measures are proposed to improve the predictability of working schedules, give the possibility to request a new form of employment, limit exclusivity and incompatibility clauses, and limit the period of probation. The population benefitting from those rights is larger under Option D, due to the extended scope. When looking specifically at casual workers and voucher-based workers as those who would benefit the most from most of the new measures, under Option C there would be some 3-4 million benefitting from the new rights to predictability,[126] while under Option D these rights would be extended to 4-7 million.

The new rights would have positive impacts on legal clarity and protection of working conditions. The predictability rights could improve the work-life balance of workers. The limitation of exclusivity clauses could lead to some 90,000-360,000 on-call workers

[125] Platform workers fulfilling the criteria for a worker are assumed to be captured in the category of employees working less than 8 hours per week. Domestic workers are assumed to be already captured by the following categories: (i) casual workers, (iii) voucher-based workers and (iii) employees with a contract duration of less than one month.

[126] Right to define with the employer reference days and hours; Right to a minimum advance notice before a new assignment or a new period of work

taking up a second job.[127] Some 14 million fixed-term workers could use the possibility to request another form of employment – this does not mean that their request will always be granted but if not thanks to the written reply they will have a better understanding of their professional prospects with the current employer. The right to cost-free mandatory training could in practice benefit workers whose employers currently do not comply with existing requirements established in national legislation or collective agreements. The right to a maximum duration of a probation period to six months is expected to have the least impact as in all Member States apart from Ireland and the UK[128] such a right already exists, and even in those two Member States legal precedents limit the duration of probation periods in practice.

B. Impacts on employers, including competitiveness and productivity (economic impacts)

	A	**B**	**C**	**D**
Costs	No change	One-off costs to familiarize with new legislation: (53EUR-SMEs, 39EUR-larger company)[129] One-off cost of WS for existing newly covered staff: 114-152m EUR Additional annual costs for newly covered new recruits: 11-30m EUR (assuming 10-20% turnover) Costs modest compared to total labour costs. There might be	One-off costs of familiarization as in Option B. Additional annual cost of providing WS: 0 EUR Minimal annual reorganisation costs due to unavailability of on-demand/zero-hours staff taking second jobs. 20-258m EUR administrative costs to respond to requests for another form of employment (likely less as less casual workers covered) No costs for employers complying with	Like in option B. In addition: 7-27m annual reorganisation costs due to unavailability of on-demand/zero-hours staff taking second jobs. 20-258m EUR administrative costs to respond to requests for another form of employment. No costs for employers complying with requirements to provide training as established in EU legislation, national legislation or relevant

[127] This is a very conservative estimate. Some part-time workers might also use the possibility to take up a second job when exclusivity clauses are lifted.

[128] In Belgium general probation periods were abolished in 2014.

[129] Removing the existing exclusions will also mean that more private households will need to provide written statements for domestic workers. See Annex 9, point 4 for an analysis of the implications of the new obligation on private households. Generally, it is concluded that time and effort required from private households to comply with the requirement will not be more than in case of an SME. In addition, templates provided by national administrations will be of particular importance to facilitate compliance among those employers.

		negative impacts on flexibility, job creation and competitiveness, but given that flexibility is only addressed at the margin, these would be expected to be moderate.	requirements to provide training as established in EU legislation, national legislation or relevant collective agreements (cost per employee in non-compliant companies only: 270 EUR[130]) Employers' organisations' concerns as in B.	collective agreements (cost per employee in non-compliant companies only: 270 EUR) Employers' organisations' concerns as in B.
Benefits	No change	Around 16-20% of employers who do not provide WS will benefit from increased productivity, loyalty, reduction in legal costs, court cases, etc. Some 80-84% who already provide WS are likely to benefit from reduced unfair competition	Increased legal certainty for 16% of employers (i.e. those not currently providing a written statement for all employees due to legal exemptions) Minimal annual additional revenues to secondary employers due to prohibition of exclusivity clauses. No benefits to the 80% of employers experiencing unfair competition. Limited benefits from retention, productivity, innovation, improved worker relations.	As in option B. In addition, 42m-167m EUR annual additional revenues to secondary employers due to prohibition of exclusivity clauses Secondary employers having access to 91-364k workers for 33m-133m hours per annum. Benefits from: retention/loyalty, productivity, innovation, improved worker relations, fewer complaints and court cases, better resource planning & work allocation, decreased cost of recruitment.

Options B, C and D share some common elements. These are expected to contribute to a greater legal clarity for employers as well as workers. Regarding costs:

[130] Estimation of cost of training per employee based on: Cedefop (2015). Job-related adult learning and continuing vocational training in Europe: a statistical picture. Luxembourg: Publications Office. Cedefop research paper; No 48. http://dx.doi.org/ 10.2801/392276. The cost represents the "total monetary expenditure" (TME) composed of direct expenditure (i.e. the sum of fees and payments to external organisations, travel and subsistence payments, labour costs of internal trainers, training centre and teaching materials) and contributions to collective or other funds. Receipts received to support training are deduced from such expenditure to derive the TME.

Shortening the deadline to the 1st day of the employment relationship appears feasible and should not impose significant costs. A potential risk of non-compliance related to this shorter deadline could be mitigated by Member States requiring employees to notify the lack of a written statement to employers before taking up any legal action, and granting employers 15 days to fulfil their obligation. Nine Member States already require the written statement to be issued before the relationship starts (BG, FR, HR, IT, LT, LV, PL, RO, SI), three require this on the first day of the job (AT, BE, LU). 50% of the employers surveyed in October 2017 already provide written statements on the 1st day or before. REFIT study shows no major differences in how burdensome employers consider the timeframe to be, regardless of whether it precedes the employment (BG, PL), is set at one month (DE, FR, IT, SE) or at two months (UK).

Based on previous experience under the acquis in which these provisions were already introduced, new **enforcement mechanisms** are not expected to generate additional costs to employers who comply with the legislation.

The costs for **strengthening the information package** are included in the estimation of costs of familiarisation. They will be further mitigated by national administrations providing relevant models and electronic templates. It should be noted that under all three options, any legislative change, even limited to the common elements mentioned above, would result in a need for employers to familiarize themselves with the legislation.

As part of the strengthened information package **posted workers** covered by Directive 96/71/EC would receive some additional elements of information (on the country of the work assignment abroad, the remuneration to which workers are entitled, information on allowances and the address of the official national website). This is not expected to generate any cost beyond the mentioned costs of familiarisation, especially that the proposed measure would retain the current derogation for workers who are posted abroad for a period of one month or less.

The new rights introduced under option C and D can also generate some costs – and benefits. Those will be more significant under option D, as the extended scope of the Directive would increase the number of workers benefitting from the new rights. Only some of those costs could be quantified.

Concerning the **rights related to predictability,** surveyed employers expected some modest additional administrative costs as well as increased labour costs and costs related to reduced workforce flexibility. On the balance, however, around half believed they would benefit from improved staff retention, better advance planning and improved relations with workers and more than two-thirds believed that such measures would be of overall benefit to the labour market in terms of better working conditions, improved workforce productivity, less unfair competition, better labour relations, greater labour

market transparency and greater competitiveness. Moreover, a significant majority of surveyed employers state that they already offer those rights in practice.[131]

The provision on the possibility to request another form of employment, where available, and receive a written reply will generate some administrative costs. Calculations based on an assumption that cost of such a written reply could be equivalent to a cost of a new written statement and that on average 25% of entitled casual workers could make such a request lead to an estimate of 20-258 million EUR total costs. However, also in the case of this right a majority of surveyed employers reported overall benefits for their companies.

As for the **prohibition of exclusivity clauses**, in the employers' survey nearly two-thirds of employers who employ casual workers (65%) include exclusivity clauses in some or all the contracts of those workers.[132] Only a minority reported that they had suffered increased labour costs (43%) or reduced workforce flexibility (39%) as a result of not using exclusivity clauses – with 53-60% reporting benefits. When unconstrained by such clauses some casual workers might take up a second job and thus be less available for on-call work, so the first employers might need to reorganise their work, leading to costs of some 7-27 million EUR per year.

In case of the right to **maximum probation periods**, both costs and benefits are rather insignificant since the proposed measure (limiting to six months) would require legislative change in only two Member States (IE, UK) and the extent of the change in practice would be limited.[133]

Finally, the analysis of relevant legislation focused on the generally applicable EU law shows the **right to training** which the employer is required to provide without cost to the worker would not generate any additional costs to employers complying with existing obligations. Only employers who are non-compliant, or employ people previously not recognised as workers but now falling under the scope, and which have the practice of

[131] Reference hours: 85% for all or some casual workers; minimum advance notice: 75% (47% for all casual workers). Minimum number of hours: 72% (including 42% for all casual workers)

[132] 65% represents employers, who employ casual workers (**excluding** those who answered "not applicable (do not employ casual workers)" and those, who responded "don't know"). Out of those 65% of employers, 27% stated they included exclusivity clause in **some** contracts with casual workers, and the remaining 38% said they included exclusivity clauses in **all** contracts with casual workers.

[133] In Cyprus a probation period may be extended from the legal duration of 6 months up to 104 weeks provided there is a written agreement between both contracting parties. In Greece for workers other than medium and high-skilled probation can go beyond 6 month and up to 12. However, as regards unfair dismissals workers on probation have essentially the same rights as others.

charging the worker for the cost of training they are obliged to provide could bear the average cost of 270 EUR per employee.[134,135]

SMEs versus larger companies

It should be noted that administrative costs are expected to be higher in SMEs compared to large companies in the case of all options. Larger companies can use economies of scale to lower the costs.

The average fixed cost of familiarisation is 53 EUR for an SME and 39 EUR for a large firm. Given the high total number of SMEs in Europe, the total costs for all SMEs is estimated at 851 million EUR and for larger companies at around 1 million EUR.

The costs of issuing a written statement or a written reply to request for a new form of work are also higher for SMEs (18-153 EUR per written statement) compared to larger companies (10-45 EUR). In case of those costs, the total costs will depend on the relative proportion of non-standard workers in companies, whether SMEs or larger.

The indirect costs of introducing new rights under option D will also be related to the selected business model significantly more than to the size of companies. There is little data to establish the extent of the use of non-standard work in SMEs as compared to large companies. The survey conducted in the framework of the supporting study[136] found for example that the percentage of SMEs and large companies reporting that they rely on employees working less than 8 hours per week or on workers on demand is very similar while the the percentage of SMEs reporting to follow a business model where atypical forms of employees working less than eight hours play an important role is slightly higher compared to large companies. A UK study on zero-hours contracts found that these contracts are used in 12% of enterprises with less than 20 employees and 28% of enterprises with 20-250 employees compared to 47% of larger companies.[137] An EU study on SMEs established that in 2009, 50% of small enterprises in EU27 employed staff with fixed-term contracts, as compared to 75% for medium-sized and 87% for large enterprises.[138] The latter two sources could indicate that impact on companies in terms

[134] Cedefop (2015). Job-related adult learning and continuing vocational training in Europe: a statistical picture. Luxembourg: Publications Office. Cedefop research paper; No 48. http://dx.doi.org/10.2801/392276

[135] To note that an alternative source estimated the cost of mandatory health and safety information and training for workers to be less than 50 EUR per employee in large companies, 75 EUR in medium and around 150 EUR in small companies (COWI (2015): Evaluation of the practical implementation of the EU OSH Directives. Main report)

[136] Note: the survey targeted employers, who were more likely to rely on atypical workers or flexible working arrangements, to achieve more meaningful answers. Therefore, the survey answers are not representative of a general employer population but specifically relate to employers employing casual workers.

[137] Office for National Statistics (2014), Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours

[138] Jan de Kok et al: Do SMEs create more and better jobs? Zoetermeer, November 2011

of business model adjustments could actually be considerably smaller in SMEs.

Annex 3 (point 4) shows a more detailed comparison of costs between the two categories of firms.

Overall, compared to other options option D generates the most costs to employers. Administrative costs are however modest in comparison with the overall personnel costs borne by companies.[139] Concerning indirect costs of the new rights, these could be more significant in companies relying to a large extent on non-standard work. While employer organisations voiced some concerns about possible negative impacts on labour flexibility, appropriate formulation of the proposed new rights could mitigate the risk of this and other unintended effects (see section 8.1 for more details on this point). Moreover, such concerns have not been confirmed in the employer survey which indicated that in practice many employers already apply some of the considered measures (e.g. advance notice or reference hours) and more than two thirds saw benefits of introducing them.

At the same time, option D is expected to generate most benefits as regards productivity, innovation, staff retention and worker-employer relations.

C. Broader impacts (labour markets, public finances, application and enforcement, fundamental rights)

	A	B	C	D
Social	Existing gaps in protection would continue. Over time, as MS legislation diverges, there would be adverse effects on labour market transparency and	Negligible impact on employment Very slight increase in risk of workers being replaced by informal agreements or self-employment contracts Reduction in undeclared work (value of 40-120m p.a.) + improved detection of undeclared work Reduction of bogus	No increase in no. of workers receiving right to information. Many non-standard workers not receiving any benefit. Modest number of on-demand/zero-hour contract workers enabled to get a second job and thus modest number of extra hours worked per annum and slight increase in their gross annual earnings	Reduction in undeclared work (value of 40-120m pa.) + improved detection of undeclared work 91-364k on-demand/zero-hour contract workers enabled to get a second job with another employer. As a result, 355-1,424m EUR increase in gross

[139] According to 2014 Eurostat data personnel costs amounted to some 29,000 EUR per employee per year in an SME and 48,000 in a larger company (source: SME Performance Review 2017 by DIW-ECON). Personnel costs are made up of wages, salaries and employers' social security costs. They include taxes and employees' social security contributions retained by the employer, as well as the employer's compulsory and voluntary social contributions.

	mobility of labour across the EU.	self-employment and activities not recognised as work.	Minimal adjustments by employers to their workforces Minimal reduction of undeclared work	annual earnings for those workers. Reduction of bogus self-employment and activities not recognised as work. Some employers (likely to be <50%) may replace casual contracts with standard forms of employment. A smaller proportion may simply recruit fewer casual workers. A yet smaller proportion might replace casual work contracts with informal agreements or self-employment arrangements.
Economic	Depending on MS choices, lost opportunities to benefit from increased tax revenues, reduced social security payments.	No loss of flexibility of casual workforce Additional tax revenues from a 1-3% shift of undeclared work into the formal economy: 8-25m EUR p.a. Reduction in social security payments, due to undeclared workers entering the formal economy: 4m-24m EUR p.a.[140]	Modest positive effect on tax revenue. Modest reduction in social security spending, and increase in legitimate social security claims	Some limitations on flexibility of casual workforce 46-185m EUR annual tax revenues (on-demand/zero-hour workers taking a second job) Additional tax revenues from a 1-3% shift of undeclared work into the formal economy: 8-25m EUR p.a. Reduction in social security payments, due to undeclared workers entering the formal economy: 4m-24m EUR p.a.[141]

[140] Assuming that reductions equal about 10-20% of the value of undeclared work brought into the formal economy.

[141] As above.

				Additional modest reduction in social security payments resulting from 33m-133m extra hours worked per annum by those workers. More harmonised information requirements across the EU
Legal	No change.	Depending on specific measure, change in 5-24 MS Increased costs of enforcement due to higher number of workers covered Positive impact on fundamental rights (gender equality, right to engage in work, right to effective remedy, solidarity and access to justice)	Depending on specific measure, change in 4-23 MS Slight increase in number of employees using dispute resolution No significant contribution to fundamental rights or to gender equality as workers remaining outside the scope of the Directive are more likely to be female	Depending on the specific measure. Substantial contribution to fundamental rights for on-demand/zero-hour contract workers currently prevented from taking a second job by exclusivity clauses

Also in this case in the three substantial options (B, C and D) there will be social benefits associated with the common measures, mainly relating to the reduction of undeclared work, and some increased costs of enforcement.

In options C and D new rights are included, but only in D this is coupled with an expanded scope. The impact on the labour market of D is significantly higher. While for C the increase of on-demand/zero-hour contract workers able to get a second job is modest, in D 91,000-364,000 on-demand/zero-hour contract workers would become able to get a second job with another employer with 355-1,424 million EUR increase in gross annual earnings. Based on the employers' survey it can be expected that while in C minimal adjustments of employers to the changed composition of the workforce are expected, in D some employers (likely to be <50%) may replace casual contracts with standard forms of employment. A smaller proportion may simply recruit fewer casual workers. A yet smaller proportion might replace casual work contracts with informal agreements or self-employment arrangements.

This has effects of economic nature: while in C the effect on tax revenue and social security payments is modest, D combines the effects of extended scope (8-25 million EUR p.a. in tax revenues and 4-24 million EUR p.a in social security payments reduction due to a shift of undeclared work into formal economy equivalent to some 40-120 million EUR p.a.) with additional 46-185 million EUR annual tax revenues and a reduction in social security payments resulting from 33-133 million extra hours worked per annum related to the application of the new rights to an extended group of workers. The baseline scenario A offers lost opportunities on this aspect.

In all substantial options (B, C, D) there is an enhanced enforcement system. This will create some costs for Member States due to expected increase of workers making use of dispute-resolution systems. Whether Member States create new institutions to comply with the new requirements will be left to their discretion. The measures will at the same time create societal benefits due to enhanced application of rules not only on information on working conditions, but also on the content of the working conditions themselves thanks to enhanced awareness. Compliant employers should not incur significant additional costs.

The legal impact would take place in all scenarios except the baseline, with changes in 4-24 Member States depending on the specific measures.

Fundamental rights would risk being not impacted/only slightly positively impacted in the baseline scenario A and in scenario C including new rights but not an enlarged scope. Fundamental rights would be positively impacted by an extended scope and in larger measure when this is coupled by the new rights in scenario D (with a substantial contribution to fundamental rights for on-demand/zero-hour contract workers).

7. HOW DO THE POLICY OPTIONS COMPARE?

As shown in the previous chapter the different policy packages produce a range of qualitative and quantitative (including monetary and non- monetary) effects, with varying degrees of certainty. Moreover, the effects vary for the different parties involved – workers, employers, public authorities.

As costs and benefits cannot be directly compared it is proposed to compare the options based on a multi-criteria analysis. This form of analysis allows combining a range of positive and negative impacts (evidenced by a mix of qualitative, quantitative and monetary data) into a single framework. It brings together the main Better Regulation criteria of **effectiveness, efficiency and coherence**.

The table below presents results of this analysis, based on elements discussed in more detail for each scenario in the sections above. A seven-stage qualitative grading system (i.e., +++, ++, +, 0, -, --, ---) is proposed, based on the legend provided in Annex 4.

Criteria for comparing options	A	B	C	D
Effectiveness				
1. Labour market impact	0	+	+	++
2. Effect on working conditions	0	++	++	+++
3. Effect on public finances	0	+	+	++
Efficiency				
1. Competitiveness & productivity	0	++	+	+
2. Ease of application & enforcement	0	+++	++	+++
Coherence				
1. Fundamental rights	0	++	++	+++
2. Social Pillar objectives	0	+	+	+++
3. EU labour law acquis	0	+	+	+++

Regarding **effectiveness**, options B and C seem to be closely matched. This is because each partially addresses the challenges related to labour market developments: option B extends and clarifies the scope of the Directive, and option C sets new rights for workers to improve predictability of work and opportunities to seek another form of employment.

Option D, combining those two elements, would most significantly increase the effectiveness of EU action. By extending the scope of the Directive it would ensure that more workers, especially those in most precarious working relationships, could benefit from the new rights. This would have a positive spill over effect on public finances, as e.g. workers freed from exclusivity clauses could seek additional employment, and there would be positive effects on their disposable incomes. While difficult to quantify, indirect positive impacts could include e.g. improved health and socio political engagement of workers.

Concerning **efficiency**, the impacts on competitiveness and productivity are less positive in case of option C and D. This is the effect of the new rights which will generate some extra administrative costs, though modest, and may have some impact on flexibility of employment. These costs should however in the longer term be outweighed by benefits at company level (higher productivity, improved retention, motivation of staff, upskilling

etc.) as well as positive effects for the whole internal market (more sustainable competition and improved level playing field for companies).

The ease of application and enforcement would be more improved with options B and D – this is a result of the extension and clarification of scope of the Directive that would facilitate detection of undeclared work.

Finally, each policy option has been tested for **coherence** with EU policy objectives:

Coherence with the EU social acquis legal framework[142]

All policy options apart from Baseline include measures 2, 3, 5 that improve coherence with the social acquis and other policy initiatives. Packages B, C and D ensure better coherence with: the posting of workers provisions; the Temporary Agency Work Directive; EU action on combating undeclared, fraudulent contracting and bogus self-employment and the equal treatment acquis covering discrimination in the workplace.

Policy package B and D would also increase the coherence of the personal scope of EU labour law. This enhances coherence with the Working Time Directive and the Part-Time, Fixed-Term and Temporary Agency Work Directive as interpreted by the CJEU, as allowing for the current exclusions to remain would give rise to incoherence.

The provision of additional material rights present in options C and D supports the goals of the Working Time Directive, Fixed-Term Directive, Part-Time Directive and Temporary Agency Directive, the Parental Leave Directive and the Proposal for a Directive on Work-Life Balance.[143]

Fundamental rights impact assessment

The baseline scenario would represent no progress towards their achievement compared with the status quo. Scenario D emerges as the most coherent with the Charter.

Coherence with the European Pillar of Social Rights[144]

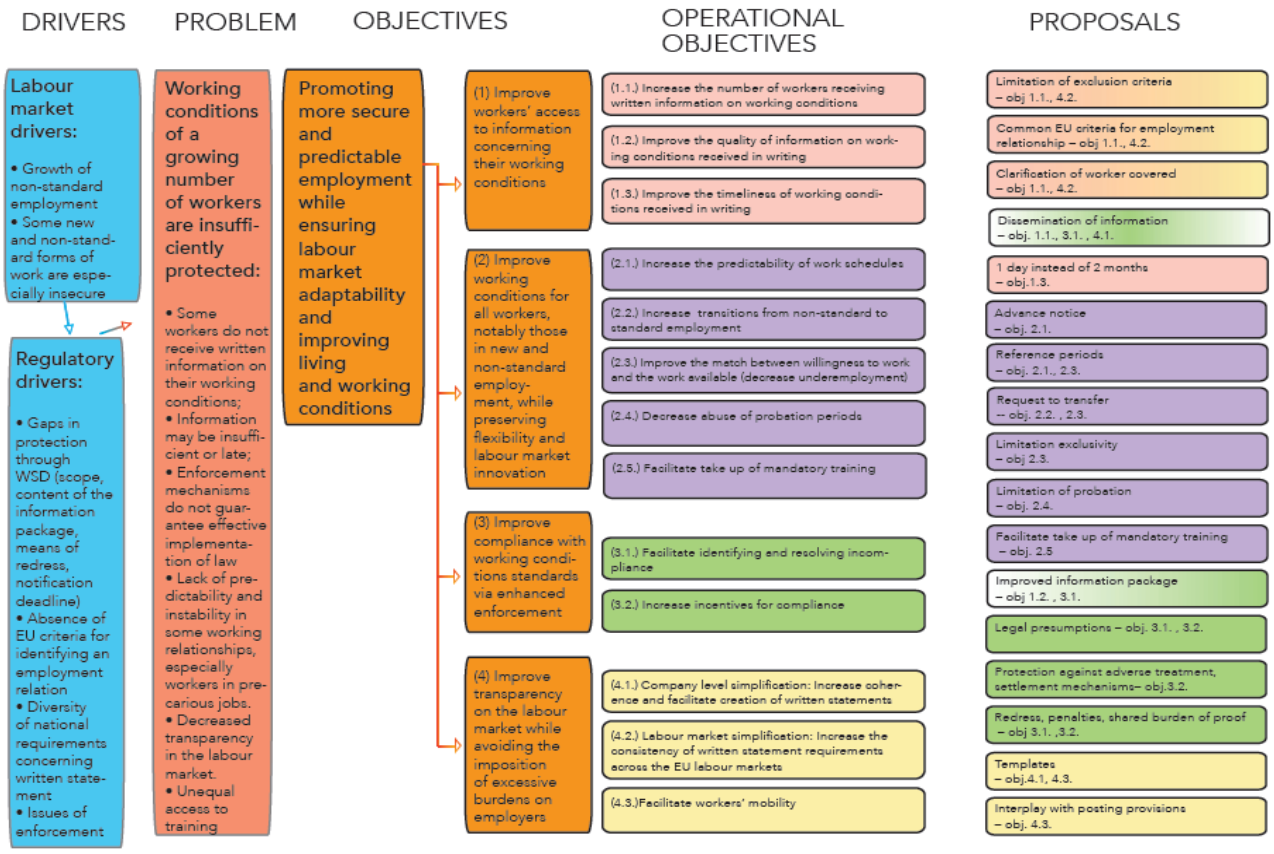
The baseline scenario would represent no progress towards their achievement compared with the status quo. Scenario D emerges as the most coherent with the European Pillar of Social Rights.

8. PREFERRED OPTION

The preferred policy option is policy package D that allows to better achieve the policy goal. It includes policy measures 1 (on personal scope), 2 (on strengthened information),

[142] Annex 7 presents an overview of EU social acquis.
[143] More detailed information is provided in Annex 10.
[144] The coherence of measures with the Pillar principles is presented in a table in Annex 10.

3 (on more timely information), 4 (new rights) and 5 (enforcement). This policy package would address all the objectives of the initiative, as illustrated in the intervention logic presented in the Figure below.



8.1 Overall impacts

a) On workers

Workers are expected to see a substantial improvement of their working and living conditions.

2-3 million additional non-standard workers will benefit from the protection of a written statement.

In addition, 5-31 million workers will in practice receive additional information (on probation, working time, social security...). 8-16 million every year will be able to start a new job with clear information on rights and obligations from the very beginning instead of up to 2 months later.

Between 4 and 7 million workers will get the possibility to look for additional work due to the enhanced predictability (reference hours, minimum advance notice). Enhanced predictability should also have a positive impact on their work-life balance and health.

Some 14 million workers are expected to use the possibility to request another form of work and thus get support in their dialogue with employer to move to a more secure and predictable form of work, some 3-6 million workers will be protected against excessive probation periods. Thanks to freedom from exclusivity clause some 0.5-1.5 million workers could seek additional employment. Only considering on-demand employment, this could enable 91,000-364,000 workers to increase the intensity of their employment, work up to an additional 33-133 million hours per year and see an increase of earnings of 355-1,424 million EUR per year. Workers' right to receive cost-free training which employers are obliged to provide through EU legislation, national legislation and relevant collective agreements would be reinforced and brought within the scope of the EU justice system. Workers whose rights are not respected would have easier access to redress.

Workers who fall outside the scope of national definitions of worker due to casual work, short or intermittent hours or zero-hour contracts, but that 'perform services for a certain period of time for and under the direction of another natural or legal person or persons in return for remuneration' will be entitled to basic rights as receiving information on essential aspects of their employment relationship, and material rights to predictability and the possibility to seek redress if they are not respected.

Persons in bogus self-employment (i.e. with self-employment contracts but a de facto employment relationship as defined in the directive) will receive additional information, rights, access to enforcement, either directly via the transposition or via court-based litigation.

The risk of regression in worker protection has been duly considered (e.g. in case of the proposed right to a maximum duration of probation period, the 6-month limit is longer than what is in place in a number of Member States). To avoid such a risk, the proposal would include a clause preventing the use of the Directive as grounds for reducing the level of protection already afforded to workers within Member States.

b) On business (including competitiveness)

Costs

The proposed policy package would result in some administrative costs to employers. The costs per company amount to 18-153 EUR in an SME and 10-45 EUR in a large company for issuing a written statement or providing a reply to the request for another form of employment. The familiarisation costs would be, respectively, 53 and 39 EUR. These costs are very modest in comparison with the overall personnel costs borne by

companies, which according to 2014 Eurostat data amounted to some 29,000 EUR per employee per year in an SME and 48,000 in a larger company.[145]

Employers anticipate also incurring increased indirect compliance costs (legal advice, revised scheduling systems, HR management time, staff training, and information of staff). These costs could not be quantified but the interviewed employers considered they would be to a modest rather than great extent.

Apart from the familiarisation, costs will accrue mainly to those employers who rely to a large extent on non-standard forms of work, and so far have not introduced in practice any of the measures aimed at increasing predictability. Costs for training will affect mainly those companies which at the moment do not comply with existing legal obligations to provide training required by EU legislation, national legislation or relevant collective agreements and rely on the practice of deducting training costs from workers' remuneration or charging them to workers.

In the section above, a possibility of a positive impact on individual wages of workers was signalled. This would be a result of workers being able to work more hours or seek work with another employer. No significant aggregate impact on minimum or hourly wage levels is however expected. These are influenced by other labour market developments, including the labour supply and demand, national legislation and collective bargaining. For individual employers, a direct effect on wages can only be expected in situations where, employees currently working undeclared would come within scope of the Directive and would become eligible for the minimum wage, where such exists.

Benefits

Employers already providing enhanced information and using more secure contracts would see additional benefits thanks to more sustainable competition. 16% of employers would benefit from increased legal certainty and cross-border hiring would be supported by more uniform minimum provisions.

Thanks to prohibition of exclusivity clauses, workers will be more available for secondary employers, which might generate some 42-167 million EUR annual additional revenues. The provision of templates and of information at national level will facilitate the preparation of written statements and awareness of existing legislation both by professional employers and by more marginal employers.

[145] SME Performance Review 2017 by DIW-ECON ((Personnel costs are made up of wages, salaries and employers' social security costs. They include taxes and employees' social security contributions retained by the employer, as well as the employer's compulsory and voluntary social contributions.)

Other benefits include higher staff retention and loyalty, improved worker relations, fewer complaints from workers, fewer court cases relating to working conditions, better resource planning and work allocation. Overall, the proposed measures could have a positive impact on company-level productivity, in line with the ILO and ESDE finding reported in section 2.3.2, and as indicated by employers surveyed in the context of the study.

Competitiveness

No significant impacts on competitiveness vis-à-vis third countries are expected.

The administrative costs related to the preferred option are, as signalled above, minimal in comparison with the overall personnel costs.

Indirect costs of limitations on flexibility would affect mainly those employers who depend to a relatively great extent on on-demand/casual work. The use of non-standard forms of employment is usually concentrated in certain sectors, such as hotels, construction and agriculture.[146] Some of these sectors have been traditionally characterised by non-standard work arrangements (e.g. construction and agriculture), while non-standard forms of employment have spread in industries previously not characterised by these arrangements, e.g. the hotel industry.[147] In the above mentioned sectors there is little direct competition with third countries based on labour costs and little scope for relocation to third countries. Moreover, if companies from third countries employ workers on the territory of the EU, those workers would also be covered by the proposed provisions.

Possibility to exempt microenterprises

As noted in the SME test (Annex 3, point 4) direct administrative costs may be relatively higher for the smaller companies but indirect costs will depend on the extent a company – irrespective of the size – depends on non-standard work and there is no conclusive evidence to point that SMEs would have a higher proportion of such workers. Some studies point in fact to the contrary. Given that 93% of EU companies are microenterprises,[148] an exemption of those employers would render the proposal ineffective. That being said, some mitigating measures are proposed in order to further decrease the administrative costs, especially in SMEs (see section 8.3 below), while taking into account that such measures should not unintentionally make SMEs less attractive employers or discourage businesses from scaling up.[149]

[146] ILO (2015), Non-standard forms of employment.

[147] Weil, D. 2014. The fissured workplace: Why work became so bad for so many and what can be done to improve it (Cambridge, Harvard University Press).

[148] SBS 2014

[149] See e.g. Eurochambers (2017): SME Test Benchmark

Possibility to exempt private households from certain provisions

The proposed Directive would allow Member States to provide that where work is performed for a household, Member States may consider that natural persons belonging to this household are not subject to employers' obligations in relation to the possibility to request a new form of work, the right to receive mandatory training cost-free and would not be subject to favourable presumptions in the event that the written statement was not provided or lacked essential information. Where domestic workers fulfil the criteria for worker status, they should receive information about their employment relationship and basic rights relating to predictability, but it is not considered appropriate to include private households within scope of the elements set out above, given the fact that they do not function as organisations and will not generally have the capacity to fulfil such obligations.

Unintended effects and mitigating measures

Employer organisations raised concerns about impacts the proposal could have on flexibility in the labour market and associated potential for job creation. These concerns were duly taken into account in the choice of measures that were eventually taken forward in the impact analysis (see discussion on discarded options (section 5.2)). Proposed measures were also analysed from the point of view of unintended effects (such as in the examples below) and formulated in a way to mitigate those risks.

- Limited flexibility

Flexibility is a crucial characteristic of today's labour market, where companies need to be agile, adapt quickly to new demands and to frequent fluctuations in demand. In some sectors services need to be delivered at short notice and/or outside usual business hours. For many workers, for example those reconciling work with caring obligations or studies, flexibility is also a key requirement.

The proposed measures (especially advance notice and reference periods for workers with variable schedules, as well as a limitation on exclusivity clauses) limit somewhat flexibility which exists in some Member States in order to improve predictability for workers and to protect their right to seek work. The measures have however been designed in order to preserve a significant scope for flexibility both for the worker and the employer, and not to hinder development of non-standard forms of work.

For example, the proposed provision on advance notice does not strictly specify the length of such a notice (it should be "reasonable"), taking into account that in different sectors different notice periods might be realistically possible. Neither are there any restrictions on the reference hours other than what already exists in legislation (e.g. Working Time Directive). For both rights – employees will still be able to accept work outside the reference hours and with shorter notice so it can be expected that if the

relationship between employer and worker is a positive and constructive one the employee will be ready to adapt to justified business needs.

- Fewer job opportunities, especially for vulnerable workers

Regarding the risk of disincentives to recruit, the question was considered whether some employers might choose either to recruit fewer workers newly-covered by the Directive or to replace such workers with others that remain outside the scope of the Directive (e.g. self-employed).

The employers' survey showed that more than 80% of employers already provide written statements for employees working less than 8 hours per week, employees with contracts of less than one month’s duration, on-demand workers and intermittent workers. It also indicated that in case the new provisions are introduced employers were more likely to convert casual work contracts into standard forms of employment than to replace casual contracts with informal agreements or self-employment contracts.

When considering the right to training, however, a possibility to require employers to provide free of charge training needed to perform required tasks was discarded on the basis of costs but also the possible impact on employers' attitude to recruiting young workers with little experience or workers requiring additional support (such as some migrant workers).

- Recourse to undeclared work, in particular in case of domestic work

Excessively heavy administrative procedures might lead some employers to decide not to comply with the obligations and not to declare their workers. This could theoretically be the case for example for private households employing domestic workers.

Analysis has shown that already now in 15 Member States domestic workers fall under the scope of the Directive and have a right to a written statement. In some countries, such as Austria and Sweden, compliance is generally high, in others the level of compliance can be particularly low and the main reason is the wish to avoid the fiscal and administrative burden associated with formal employment and to retain the flexibility to terminate the employment relationship as and when the employer wishes.

Generally, it appears that the level of compliance with regard to domestic workers depends on the national context: ease of application as well as the level of other obligations on employers (fiscal, social security etc.). In the proposal the question of ease of application is addressed through the requirement for Member States to provide clear information to employers and develop relevant written statement templates, and the possibility to exempt private households from certain obligations under the Directive.

- Risk of disproportionate costs of unintended non-compliance

The proposed measures include strengthened enforcement measures, coupled with a significant shortening of the deadline for provision of a written statement to a worker. There is a risk that an employer who unintentionally misses the deadline could face rather serious consequences, including a favourable presumption of a permanent employment contract. Such a result would be disproportionate to the employer's failure to comply.

In order to avoid such an unintended effect, the proposed provisions establish that the employer is notified about the missing document or elements of information and given 15 days to complete them before any administrative action can be launched or any presumption can be established.

c) On Member States

The specific impacts per Member State would depend on a number of factors. Firstly, the extent of the necessary legislative adjustments would differ – for some Member States the changes would be limited, others would need to introduce a substantial number of new elements in their transpositions.[150] Secondly, the extent to which non-standard forms of work are present in the Member States varies.[151] Thirdly, the broader current and future socioeconomic context would have an influence on the potential impact of the changes: in Member States experiencing labour supply shortages, the better availability of non-standard workers to other employers might be especially important, in those where skills mismatch is pronounced, the training measure might have a particular impact, in others, where precarious working situations are widespread, the social effects of higher predictability in employment might play the greatest role.

The following examples illustrate the diversity of national situations, which in practice might lead to uneven playing field for companies across the EU:

- Wide use of collective agreements in some Member States (e.g. Nordic) means workers' rights in practice are often more extensive than those provided by the Directive and other EU legislation.
- On-call/Zero-hour contracts are most prevalent in northern/western Europe (DK, IE, NL, SE, UK) as well as IT and MT. Such employment contracts are generally allowed in law but typically do not give basic rights to workers: provision of reference hours, minimum advance notice period, and freedom from exclusivity clauses. Some such workers are not yet covered by the Directive and would therefore be covered by an extension of the scope.

[150] See Annex 8, point 6 for an overview of changes required per Member State.

[151] See Tables 2-7 in Annex 6 for estimated numbers of some relevant categories of non-standard workers per Member State

- In some other Member States, there are fewer legally-employed on-call workers. Instead, there are certain contractual forms that are not employment relationships or are 'intermediate' or grey areas or potentially bogus self-employment, e.g. civil law contracts in Poland, mini-jobs in Germany, auto-entrepreneurs in France, 'if-and-when' contracts in Ireland, 'day workers' in Romania. Here, the issue is definitions of employment – which would be addressed in part by the clarification of worker status in the proposed Directive.
- Similarly, in the UK and IE, certain contractual forms in the gig economy are increasingly being challenged in the courts. For example, 'if-and-when' contract workers in Ireland have gained certain rights to information and consultation, as if they were employees. Some platform workers in the UK have won cases regarding their employment status.
- In some other Member States (mostly southern/south-eastern), employees may enjoy coverage under the Directive and casual workers have most/all the basic rights in question. However, there is a hidden problem of undeclared work and bogus self-employment, e.g. Italy, Romania. The effects of the revised Directive will depend on stronger enforcement and sanction mechanisms.

While taking the above into account, the following paragraphs summarise the general impacts expected across all Member States.

A reduction in undeclared work and increased ease of detection of undeclared and fraudulent work can be expected, in particular in sectors which see both casual and undeclared work, resulting potentially in severe abuse of workers' rights and human rights. The value of undeclared work brought into formal economy is estimated at 40-120 million EUR per year. Better and more complete information on working time and additional rights will result in improved work-life balance and wellbeing. Training rights will enhance the upskilling and adaptability of the workforce.

Productivity of national economies could increase as a result of the proposed measures. Improved job predictability can improve work-life balance, which in turn can positively impact growth as it allows productive workers to be kept in their jobs.[152] Enhanced training can contribute to diminishing skills mismatch, which is another drag on the growth potential of economies. OECD estimates that a higher level of skills matching could result in considerable gains in aggregate productivity (e.g. up to 10% in Italy). Better skills match is especially important to realise the full dividend of innovative technologies.[153]

[152] OECD, The productivity-inclusivity nexus, Paris 2016, p. 78
[153] Ibid., p.65

More uniform scope of application of the Directive and clearer information on working conditions and job requirements will support mobility both within the national labour markets and across the EU. Enhanced access to redress could improve the consistency in the application of the legal framework. Social cohesion would be enhanced by the reduction in the degree of precariousness of vulnerable workers, which would also support gender equality in the labour market due to the overrepresentation of women in more precarious work and involuntary part-time.

Some modest one-off transposition and ongoing implementation costs can be expected as legal frameworks of Member States will need to be adapted.

Additional 8-25 million EUR annually in tax revenues and 4-24 million EUR annually in social security payments reduction are expected due to a shift of undeclared work into formal economy. There could also be an increase of some 46-185 million EUR per year in tax revenues and a reduction in social security payments because on-demand workers will be able to seek other employment due to the provision on exclusivity clauses. Receiving information about social security contributions and entitlements can strengthen the awareness of the worker's own status and contribute to an early activation of the population to invest in social protection, so avoiding moral hazard, and potentially decreasing public expenditure in a life-long perspective.

Significant contribution to fundamental rights can be expected, notably concerning the freedom to choose an occupation and right to engage in work, equality between men and women, right to effective remedy and access to justice.

8.2 REFIT (simplification and improved efficiency)

The preferred option - policy package D - aims at achieving the policy objective with the most effective and efficient tools, ensuring that intended benefits are achieved without unnecessary burdens, particularly for SMEs.

Follow-up to the REFIT evaluation

The preferred option includes proposals resulting from the REFIT evaluation for improving effectiveness and efficiency, and achieving in the mid-term simplification.

The preferred option would first of all improve the **effectiveness** of the existing Directive by addressing the main points raised in the REFIT evaluation. It would broaden the scope of application, shorten the deadline for delivering written statements, update the content of the written statements in line with labour market developments, and improve the enforcement mechanisms.

Concerning **efficiency**, the REFIT evaluation concluded that, in general, the compliance costs are appropriate. The assessment of administrative burden caused by the existing

Directive did not reveal any significant differences related to the size of the undertaking. The share of SMEs stating that they would still comply with the obligations even in the absence of minimum requirements was in fact slightly higher than the average and for micro enterprises it was only slightly lower than the average. No particular aspects of the obligations stood out as particularly onerous or complicated to comply with.

Additional costs related to new obligations

The preferred option creates **new obligations** for business. As shown in the impact analysis the administrative costs related to those new obligations are rather limited: a cost of issuing a new or revised written statement is expected to be 18-153 EUR for SMEs and 10-45 EUR for larger companies. Companies would also have costs related to familiarisation with the new Directive: an average of 53 EUR for an SME and 39 EUR for a larger company. In addition, in case of the provision on the possibility to request a new form of work, the employer would incur some cost related to the preparation of a written reply. It is assumed that it should not on average exceed the cost of preparing a new written statement, and could in many cases be substantially lower given the more limited scope of the letter.

Type of cost	**One-off**	**Recurrent (per year)**
Familiarisation	852.5 m EUR[154]	none
Providing written statements to newly covered employees	114-152 m EUR[155]	11-30 m EUR[156]
Replying to the requests for another form of employment	None	20-258 m[157]
Total costs (maximum)	**977.5 m EUR**	**288 m EUR**

As shown, a majority of the costs are one-off (in the first year) and relate to the need for employers to familiarise themselves with the legislation. Such costs would be encountered irrespective of the content of the proposal (i.e. would not be higher for the preferred option in comparison to other options).

The following measures could mitigate the costs:[158]

[154] This total amount represents the average cost per company (53 EUR for an SME and 39 EUR for a larger company) multiplied by the number of all companies in the EU. It is likely an overestimation as mostly companies needing to issue new written statements will need to invest in familiarising with the new legislation.

[155] Cost per written statement: 18-153 EUR for SMEs and 10-45 EUR for larger companies.

[156] As above

[157] Cost the same as for issuing a new written statement. Assuming 25% of employees submit such a request every year. The range reflects the lower and upper bound of a cost for a single written statement.

[158] The assumption of 30-40% savings per written statement in case of availability of electronic templates is derived on the basis of assumptions in the "Proposal for a Directive on e-invoicing in public procurement" (COM(2013)449), where according to available data e-invoicing could lead to 60-80%

REFIT Cost Savings – Preferred Option(s)		
Description	***Amount – one-off***	***Amount – recurrent***
1. Member States are required to develop electronic templates and models of written statements.[159]	30-40% savings per written statement. One-off: 46-60 m EUR	30-40% savings per written statement. Recurrent: 9-12 m EUR
2. In micro, small, or medium enterprises, Member States may provide for the deadline to reply to requests for another form of employment to be extended from one month to no more than three months and/or 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.	-	Some savings (at least 10%) and facilitation of compliance with the administrative requirements. Recurrent: 2-26 m EUR
3. Member States are required to make information related to the content of the new directive easily available to workers and employers.	10-20% savings on the familiarisation costs. (85-170 m EUR)	-
Total savings	**230 m EUR**	**38 m EUR (at least)**

It is expected that the savings could materialise relatively quickly. Information by Member States, expected to save some of the familiarisation costs could be provided on adoption of national transposition, and templates developed in the course of the first year of application of the national transposition. Exemptions for SMEs could be applied immediately upon adoption of the transposition.

Simplification

The administrative costs, mainly short- and mid-term, could be further set off by longer-term benefits for employers.

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savings in the administrative costs. As e-invoicing is a much more comprehensive system than an electronic template, the savings for electronic templates were assumed to equal half of those for the e-invoicing.

[159] There will no obligation for companies to use such templates. However, it can be assumed that companies will want to use them to simplify processes and have better assurance of compliance.

The increased coherence of the scope allows streamlining certain elements of information provision beyond contractual statuses, both within the company and for future recruitment. This allows as well a more coherent legal framework across the EU, providing legal clarity that is expected to ease cross-border business activity and mobility.

Increasing the consistency of written statements across the EU allows simplification of worker mobility and cross-border business action. Also in this case, the easy to access and available information on applicable national law is expected to ease cross-border business activity.

8.3 Subsidiarity and proportionality

The preferred option aims at setting a framework for better clarity, predictability, transparency, simplification and convergence on EU labour markets for workers, employers and Member States, while preserving flexibility and labour market innovation and aiming to avoid the imposition of excessive burdens on employers.

Subsidiarity

Given the EU-wide dimension and the scope of the problem to solve, the measures included in the preferred policy option need to be adopted at EU level in order to achieve the identified objectives. In particular, action solely by Member States would not counter harmful divergence - and even potentially competition on the basis of social standards - in their individual regulatory responses to increasingly new and non-standard forms of work and their related enforcement provisions.

Indeed, the preferred option offers the highest added value based on a minimal degree of harmonisation between Member State systems which respects their own competences to set higher standards and for social partners to vary the mix of material rights and obligations by agreement.

The preferred option would, in line with the legal basis Article 153 TFEU, support and complement the activities of the Member States through minimum requirements for gradual implementation.

Proportionality

By striking a balance between opinions of the two sides of industry expressed in the formal social partner consultation responses and building on practices already developed in Member States, the preferred option represents a realistic and proportionate set of measures appropriate to contributing to a realisation of the ambitions of the Social Pillar.

The preferred option would require realistic means to implement that would not generate or impose disproportionate new obligations. Measures for mitigating burden and supporting compliance are therefore included in the proposals. The costs that the

preferred option would entail are reasonable and justified in light of the accrued and longer-term benefits in terms of more secure employment, simplified procedures for both workers and employers and overall improved living and working conditions matching thereby the wider EU social ambitions:

- no direct costs are expected for workers;

- for employers (including SMEs) the fixed-costs of familiarisation (an average of 53 EUR for an SME and 39 EUR for a larger company) and variable costs related to the number of employees that would be covered by an extension of the Directive and the number of employees using the possibility to request a new form of employment;

- for Member States: increased costs of enforcement due to higher number of workers covered;

- at EU level, monitoring and evaluation costs of the initiative, as such minimal impact on the budget of the EU.

On the whole, the option does not go beyond what is necessary to achieve the objective identified for the EU intervention.

9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

9.1. Monitoring

The Commission will monitor the implementation of the Directive in the Member States in the context of labour market developments.

For the sake of monitoring the objectives of the initiative are translated into operational objectives:

Regarding specific objective (1):

- Increase the number of workers receiving written information on working conditions
- Improve the quality of information on working conditions received in writing
- Improve the timeliness of working conditions received in writing

Regarding specific objective (2):

- Increase the predictability of work schedules
- Increase transitions from non-standard to standard employment
- Improve the match between willingness to work and the work available (decrease underemployment)

- Decrease abuse of probation periods
- Facilitate the take up of mandatory training for all workers

Regarding specific objective (3):

- Facilitate identifying and resolving incompliance
- Increase incentives for compliance

Regarding specific objective (4):

- Company level simplification: Increase coherence and facilitate creation of written statements, including for micro-enterprises and SMEs
- Labour market simplification: Increase the consistency of written statement requirements across the EU labour markets
- Facilitate workers' mobility

The following monitoring framework would inform on progress towards achieving the objectives of the Directive and will be subject to further adjustment according to the final legal and implementation requirements and timeline. Considering the diversity of current situations and regulations prevailing on the national labour markets indicators and relevant benchmarks success will be elaborated and, where appropriate, disaggregated by Member State, by type of company, by type of contract or work-status, by gender.

To avoid putting additional administrative burden on Member States or employers due to the collection of data or information for the purpose of monitoring, the proposed indicators rely as far as possible on existing data sources.

Table 3. Indicators on progress towards objectives

Specific objectives	**Operational objectives**	**Indicators**	**Source of data**
Improve workers' access to information concerning their working conditions	Increase the number of workers receiving written information on working conditions	Number of workers entitled to written statements; Familiarisation costs for business;	Transposition checks, Implementation report
	Improve the quality of information on working conditions received in writing	Number of workers getting more comprehensive information in the written statements	Transposition checks, Implementation report
	Improve the timeliness of working conditions received in	Number of written statements issued on the 1st day of	Transposition checks, Implementation report

	writing	employment	
Improve working conditions for all workers, notably those in new and non-standard employment, while preserving scope for adaptability and for labour market innovation	Increase the predictability of work schedules	Number of workers getting reference days/hours; Number of workers receiving advance notice before an assignment; % of employers setting a policy for the notice period required for staff asked to work	Transposition checks, Implementation report ; Eurofound European Working Conditions Survey (Q: How often have you been requested to come into work at short notice? Q:How are your working time arrangements set; Q: How well do your working hours fit in your family and social commitments;)
	Increase transitions from non-standard to standard employment	% transition from temporary to permanent work; % of workers in involuntary temporary employment	Eurostat transition between temporary and permanent work (tepsr_wc230); Eurostat involuntary temporary employment (tesem190); if available nationally transitions between very precarious forms of employment to traditional non-standard employment (e.g. fixed term).
	Improve the match between willingness to work and the work available (decrease of underemployment)	% of the working age population underemployed; % of part-time workers underemployed; Number of workers freed from exclusivity clauses; Number of workers available for extra work following ban on the exclusivity clauses;	ECB: Eurostat underemployed part-time workers (fsi_sup_a); Eurofound EWCS if you had a choice, how many hours per week would you prefer to work (answer 'more than currently' ranging 5-20% in EU); involuntary part-time rate;
	Decrease abuse of probation periods	Number of workers getting the right to a max. duration of a probation period;	Transposition checks, Implementation report

	Increase access to training recognised as being necessary in EU legislation, national legislation and in relevant collective agreements	Number of workers reporting that they have received training recognised as necessary in national legislation and/or relevant in collective agreements	Relevant EWCS statistics
	The objectives of the initiative will be pursued while preserving flexibility, which will be monitored via Eurostat statistic including increased employment rate.		
Improve compliance with working conditions standards though enhanced enforcement	Facilitate identifying and resolving incompliance	Number of workers denouncing abuses; Number of workers getting better access to redress; Increased efficiency of redress mechanisms	National reports, studies
	Increase incentives for compliance	Number of abuse of rights in mid-term (in short term expected increase of number due to additional behaviour becoming illegal due to change in legislation).	Labour inspection reports, studies
Improve transparency of the labour market while avoiding the imposition of excessive burdens on undertakings of all sizes	Company level simplification: Increase coherence and facilitate creation of written statements including for micro-enterprises and SMEs.	Number of MSs developing Templates for written statements; Number of MS providing clear and available information on legal framework applicable.	Transposition checks, studies
	Labour market simplification: Increase consistency between written statements requirements across	Increased comparability between contracts; Perceived legal certainty for employers;	Transposition checks, Studies

	the EU labour markets		
	Facilitate workers' mobility	Increased consistency between contracts, Number of MS providing clear and available information on legal framework applicable.	Transposition checks, Studies

Overall, the monitoring in the context of the **European Semester** provides with contextual data on national labour markets / working conditions.

Furthermore, the policy background of the European Social Pillar and the **Social scoreboard** established to monitor progress on the ground will serve to track general employment/labour market/working conditions and societal trends and performances across countries. With further evidence provided through the annual review on Employment and Social Developments in Europe (**ESDE)**, the Commission will be able to produce reporting on improved working conditions of workers.

Eurostat (EU LFS, EU SBS) and **National labour market data** could also be used to monitor the impact of a revised Directive. Eurofound scrutinises and discusses working conditions developments including various issues related to the Directive. In particular the recurrent European Working Conditions Survey (EWCS) allows comparisons over time on working conditions of the EU workforce that can be of high relevance to monitoring the impact of the Directive. The recently established European Platform to enhance cooperation in prevention and deterrence of undeclared work (including bogus self-employment) will contribute with its work to provide data based on information from enforcement authorities, such as labour inspectorates, social security, tax and immigration authorities and social partners.

The Commission might also run Eurobarometer surveys and/or promote independent studies to survey specific aspects of the Directive along the policy or contextual needs and where those aspects are requesting dedicated research.

9.2. Evaluation

The Commission will proceed to a review of the Directive and an evaluation of the impact of the revised Directive in consultation with the Member States and social partners at EU level in line with a review provision in the text of the revised Directive,

ensuring that there is a sufficiently long period to be able to evaluate the effects (observed changes) of the initiative after it has been fully implemented across all Member States.

The evaluation will include an assessment of whether the operational objectives of the revised Directive have been reached. The benchmark against which progress will be measured is the baseline situation defined in this Impact Assessment (see Policy package A in sections 6 and 7). This evaluation will take into account available monitoring data. It may include a public consultation and/or specific stakeholder consultation and/or a survey of stakeholders to review the effect of the revised Directive on the different categories of stakeholders.

A particular focus will be cast on the evaluation criteria required by the Better Regulation guidelines as well as on the significant economic and social effects of the initiative (in particular those identified in this IA) including contribution to the broad objectives of quality of work, work-life balance, wellbeing and health of workers..

ANNEX 1: PROCEDURAL INFORMATION

Annex 1:

Lead DG, Decide Planning/CWP references
The lead DG is DG EMPL, DG Employment, Social Affairs and Inclusion
Agenda planning/Work Programme reference 2017/EMPL/001

Organisation and timing
-The Impact Assessment was assessed by the Interservice Steering Group (ISSG) on 26/10/2017,on 16/11/2017 and on 01/12/2017.
It was then assessed via a fast-track Interservice Consultation meeting on 08/12/2017.

- The Analytical Document accompanying the second phase consultation of social partners on which the Impact Assessment is based, together with the second stage consultation document, was assessed by the ISSG on 11/07/2017 (present DGs SG, GROW, HOME, JUST, SANTE, SJ, TAXUD) and adopted following ISC (DGs consulted AGRI, BUDG, COMM, COMP, DEVCO, EAC, ECFIN, ECHO, ESTAT, HOME, HR, CNECT, JUST, MARE, MOVE, REGIO, RTD, SG, SJ, TAXUD, TRADE, GROW, SANTE, FISMA, EPSC).

- The first stage consultation document and SWD on the REFIT evaluation were assessed by the Interservice Steering Group 12/01/2017 (present DGs SG, ESTAT, GROW, HOME, JUST, SANTE, SJ, TAXUD) and adopted following ISC (DGs consulted AGRI, BUDG, COMM, COMP, DEVCO, EAC, ECFIN, ECHO, ESTAT, HOME, HR, CNECT, JUST, MARE, MOVE, REGIO, RTD, SG, SJ, TAXUD, TRADE, GROW, SANTE, FISMA).

- The first stage consultation document, SWD on the REFIT evaluation together with the terms of reference of the impact assessment study were discussed on ISSG on 6/12/2016 (present DGs SG, BUDG, ECFIN, ESTAT, GROW, HOME, JUST, SANTE, SJ, TAXUD and Cabinet of President) .

Consultation of the RSB

The Impact Assessment report was reviewed by the RSB and discussed with the author DG in a meeting on 29 November 2017. On 1 December 2017 the RSB issued a positive opinion with reservations.

The revisions introduced in response to the RSB opinion are summarised in the table below:

RSB main reservations	Changes done in the IA
Alignment between the IA and the latest version of the proposal	The revised report has been updated throghout to reflect the adaptations discussed at the meeting with the RSB: regarding the criteria for establishing who is a worker (include all elements of the CJEU definition); the right to

	training (right limited to training required in EU legislation, national legislation and relevant collective agreements); the measures to alleviate burdens with regard to the possibility to request another form of employment.
(1) The categories of workers that fall under the scope of the initiative are unclear, in particular as regards bogus self-employed or workers under zero-hours contracts.	As discussed in the section 2 on problem definition the initiative refers to all workers, including those in new and non-standard forms of employment. A more thorough presentation of measure 1 (scope) in section 5.3. clarifies that extension of the scope of the directive would be achieved through removal of existing derogations and application of the CJEU criteria for establishing worker status. It states that such criteria would facilitate inclusion of bogus self-employed. It also explains that the proposed derogation of 8h/week would not apply to an employment relationship where no guaranteed amount of paid work is predetermined before the employment starts in order not to exclude effective coverage of zero-hours workers. In the presentation of considered policy packages (section 6.1) it is explicitly explained that policy package C is not fully coherent with the problem definition and objective of the proposal in order to analyse what the impact of the new rights would be if the scope of the Directive remained unchanged.
(2) The report is not specific enough with regard to the rationale and expected benefits of the measures in terms of upward convergence towards better working conditions.	Presentation of the measures (section 5.3) explains the rationale for the choice of options and explains that the goal of the initiative is to achieve an upward convergence. The baseline (5.1) also refers to risks related to social dumping and competition on reduced social standards. Under point 8.1 c) examples of diverse situations across MS with regard to non-standard work provide some illustration of risks in terms of social dumping.

	In section 5.2. the report explains why another type of legislation was not chosen (targeting specific categories of workers) and why the Written Statement Directive is the appropriate tool to introduce basic rights of general application and ensure the future-proofing of measures.
(3) The report does not properly substantiate its selection or discarding of different options as well as their content.	Section 3.2. presents in more details the positions of social partners in the two-stage consultation. Section 5.2. presents more thoroughly discarded options (non-legislative and legislative), providing further explanation on why e.g. some measures put forward by the social partners, the European Parliament and REFIT were not taken forward. Policy package E (repeal) has been removed from the comparison of options and discarded upfront as suggested by the RSB. As requested by the RSB, the report is more explicit on the extent that collective agreements were taken into account in the analysis (see section 5.3 of the main report and section 7 of Annex 8).
(4) The report does not sufficiently discuss risks and possible unintended consequences of the measures.	Section 8.1 includes an analysis of potential unintended effects (such as limitations on flexibility, risks of decreased job opportunities for vulnerable workers, risk of increased recourse to undeclared work, risk of disproportionate costs of unintended non-compliance). It presents relevant mitigating measures. The SME test (Annex 3, point 3) has been expanded to develop on the incidence of non-standard work in SMEs and related impacts. Section 8.2 (REFIT) presents measures to decrease administrative burdens for SMEs and quantifies resulting savings.

Evidence, sources and quality and external expertise

The following expert advice has fed into the Impact Assessment:
- From the REFIT Evaluation of the 'Written Statement Directive' (Directive 91/533/EEC) (SWD(2017) 205 final).
- From the Report of the public consultation Accompanying the document Establishing a European Pillar of Social Rights (SWD(2017)206).
- From the commissioned study "Study to support Impact Assessment on the Review of the Written Statement Directive" by CSES and PPMI.
The study indicates clearly when absence of comparable data at European level could impact on robustness of calculations.
- From the European Centre of Expertise (ECE) and European Labour Law Network – (ELLN).
- From literature review as referred to in footnotes.

ANNEX 2: STAKEHOLDER CONSULTATION

Several strands of stakeholder consultation have been performed to inform this initiative.

This includes the two Treaty-based Social Partners Consultations, the consultation for the REFIT evaluation of the Written Statement Directive, and the Public Consultation on the European Pillar of Social Rights. The two latter have already been presented as Staff Working Documents.

1. Results of the first phase Social Partners consultation

The first phase of social partner consultation closed on 23rd June 2017.

Workers' organisations

Six trade unions replied to the first phase consultation: the European Trade Union Confederation (ETUC), Eurocadres, the European Confederation of Executives and Managerial Staff (CEC), the European Confederation of Independent Trade Unions (CESI), the European Arts and Entertainment Alliance (EAEA), the European Federation of Journalists (EFJ). It should be noted that ETUC's reply also took into account the view of 10 ETUC sectorial trade union organisations.

The workers' organisations agreed, broadly, with the challenges described in the consultation document, the need to improve the effectiveness of the written statement Directive and to broaden its objectives in order to improve the working conditions of vulnerable workers. They welcomed, in particular, the initiative of a minimum floor of rights[160] for workers and acknowledge the need for further action at EU level in line with the European Pillar of Social Rights.

Possible improvements to the EU legal framework

The workers' organisations were generally in favour of the insertion of a definition of worker based on the CJEU case law. However, ETUC argued additionally for the inclusion of self-employed in the scope of application. Trade unions stated the need to cover, in particular, casual workers,[161] and those in new and atypical forms of

[160] The first phase consultation document used the terms 'floor of rights' since these new rights will complement the existing floor of rights (as regards working conditions and protection of health and safety at work) already established at EU level.

[161] 'Casual work' is not formally defined at EU level. Eurofound defines 'casual work' as '*a type of work where the employment is not stable and continuous, and the employer is not obliged to regularly provide the worker with work, but has the flexibility of calling them in on demand*'. Casual work covers on-call / on-demand (such as zero-hours contracts) and intermittent work.

employment. They favoured removing the exemptions for short employment relationships and short working hours.

With regard to the extension of the information package, trade unions were in agreement with the list suggested in the consultation document. However, ETUC advocated broader and more detailed information requirements regarding working time arrangements (rest periods, length of break), elements of remuneration (bonus, overtime, sick pay), the identity of sub-contractors, an obligation to hand out and ensure access to relevant documents, information for temporary agency workers on the duration of assignment and name of user undertaking, information on worker representatives and on equal pay rights, information on (equal) pay and social contributions for workers working abroad, information to posted workers about their rights, information on conditions of accommodation, as well as a series of specific elements for interns, trainees and apprentices.

Trade unions unanimously agreed with the proposal to reduce the 2 months deadline for the employer to provide the written statement and stated that this should be prior to the start of the employment relationship or immediately on signing the contract.

The need to improve access to sanctions and means of redress and their effectiveness was acknowledged, including by calling for the introduction of a presumption of employment in case the employer fails to provide a written statement.

Workers' organisations were strongly in favour of a floor of rights for workers. In addition to the proposals in the consultation document, ETUC advocated a minimum notice period (3 months), a right to decent working hours, a right to at least the minimum wage, and finally a right to social protection in conjunction with the access to social protection initiative of the Commission. ETUC also argued for inclusion of collective rights in the floor of rights: the right to join and be represented by a trade union, the right to freedom of association and finally the right to collective bargaining.

Willingness to enter into negotiations

The workers' organisations expressed their willingness to enter into negotiations with employer organisations; however, they urged the Commission to come up with a legislative proposal that would improve the situation of workers in case negotiations were not launched or if they failed.

Since the issue of the qualification of on-call time as working time is a separate issue dealt with in the context of the Directive 2003/88/EC on working time, for ease of understanding this document will mainly use 'on-demand work' instead of 'on-call work'. Eurofound meaning does apply. Indeed, in the framework of working time, on-call time refers to any period where the worker is not required to carry out normal work with the usual continuity, but has to be ready to work if called upon to do so.

Employers' organisations

Thirteen employers' organisations replied to the first phase consultation: Business Europe, the European association of craft small and medium-sized enterprises (UEAPME), the Council of European Employers of the Metal, Engineering and Technology Based Industry (CEEMET), the Association of Hotels, Restaurants and Cafés in Europe (HOTREC), Eurocommerce, the Confederation of European Security Service (COESS), the European Chemical Employers Group (ECEG), the Council of European Municipalities and Regions (CEMR), the World Employment Confederation, the European Farmers Association (GEOPA-COPA), the European Community Ship-Owners Associations (ESCA), the European Coordination of Independent Producers (CEPI), the European Centre of Employers and Entrerprises providing Public Services and Services of general interest (CEEP).

A large majority of employers' organisations stated their opposition to the revision of the Directive, and all of them rejected the idea of creating a minimum floor of rights for all workers.

Possible improvements to the EU legal framework

A large majority were opposed to the extension of the scope of application of the Directive and the insertion of a definition of worker. They argued that this definition would be too broad and would hamper flexibility for business and would depress job creation. They raised concerns about subsidiarity and the impact on Member States' national legal arrangements. However, COESS was favour of introducing an EU definition of worker, to cover all forms of employment and to simplify the exclusion provisions. For COESS, this would help in reducing unfair competition.

All employers' organisations expressing a view, with the exception of COESS and HOTREC, did not support amending the information package. COESS supported the possible extension outlined in the consultation document. HOTREC supported including information about probation and about the applicable social security system.

Regarding the reduction of the 2 months' deadline for providing the written statement, most employer organisations were not in favour of any change. HOTREC stated that it could be reduced to 1 month but exemptions should remain so as to avoid creating additional administrative burden.

No employers' organisation supported changes at EU level to the system of redress and sanctions. Some indicated that this should be left to Member States. For the World Employment Confederation, better implementation and enforcement of the existing

Directive would be more effective than a revision. HOTREC indicated that some of its members could accept favourable presumptions of employee status.

All organisations were opposed to the floor of rights of EU workers, arguing that this would infringe proportionality and subsidiarity principles. They also highlighted the importance of respecting the autonomy of the social partners and stated that the issues raised in the consultation should be tackled either at national level or in collective agreements.

Willingness to enter into negotiations

In their responses to the first phase consultation, Business Europe, UEAPME, and CEEP expressed their willingness to engage in exploratory talks with the ETUC in order to assess the feasibility and appropriateness of initiating a dialogue under Article 155 TFEU on the Written Statement Directive (challenge 1 of the consultation document). The other organisations were not in favour of opening discussions at EU level.

Subsequent to the first phase consultation, ETUC, CEEP and Business Europe confirmed that they were not in a position to initiate formally the joint negotiation process provided for in Article 155 TFEU, while reserving the possibility to do so in the context of the second phase consultation.

2. Results of the Second phase Social Partners consultation

The second phase consultation of Social Partners started on 21 September 2017 and closed on 3 November 2017. The views of workers' organisations and employer's organisations are summarised here below.

Workers' organisations

Ten trade unions replied to the second phase consultation: the European Trade Union Confederation (ETUC)[162], Eurocadres, the European Confederation of Executives and Managerial Staff (CEC), the European Confederation of Independent Trade Unions (CESI), the European services workers (UNI Europa), the European Cockpit Association (ECA), the European Arts and Entertainment Alliance (EAEA), the European Federation of Journalists (EFJ), the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT) and the World Footballers' Association (FIFPro).

In addition, two sectoral trade unions provided a joint reply with a corresponding employers' organisation: the European Transport Workers' Federation (ETF) with the European Community Shipowners' Associations (ECSA) and the European Federation of

[162] It should be noted that ETUC's reply also took into account the view of its 10 sectoral trade union federations.

Food, Agriculture and Tourism Trade Unions (EFFAT) with the Employers' Group of Professional Agricultural Organisations in the European Union (GEOPA-COPA).

Views on personal scope of the Directive

All workers' organisations support clarifying and broadening the personal scope of the Directive by introducing criteria on the basis of which Member States would determine worker status, for the purpose of the Directive, under national competence. Some (CEC, ECA, FIFPro) endorse the proposal to base criteria on CJEU jurisprudence. Several (ETUC, EAEA, EFJ, UNI Europa) argue that the scope of the Directive should be extended to cover "self-employed workers" (i.e. the economically-dependent self-employed) and "autonomous workers", and also include trainees and apprentices, and propose additional criteria to achieve this. Several worker organisations emphasise the need to use the Directive to combat bogus self-employment and to introduce a refutable presumption of employment (ETUC, ECA, EAEA, Uni Europa, and FIFPro). EFFAT calls for vulnerable cross-border seasonal workers in the agriculture sector as well as the food processing and tourism industries to be explicitly covered.

ETUC additionally argues for clarifications on the concept of employer, including confirmation that on-line platforms may be employers for the purpose of this Directive, also where they act as intermediaries.

ETUC, endorsed by Eurocadres, EFFAT, FEJ, UNI Europa and FIFPro, support the removal of the exclusions contained in Article 1.2 of the current Directive, but do not support their replacement by an alternative threshold of economic activity below which the obligation to provide a written statement would not apply. By contrast, CESI and ECA advocate stricter limitations on exclusions but not their complete removal.

Modifications to information package and timing

ETUC, endorsed by EAEA, FEJ and UNI Europa, support the modification of the information package proposed in the consultation document, and request in addition the inclusion of information concerning: the components of a working day or week such as breaks and rest; the components making up remuneration; the identity of contractors in case of subcontracting; an obligation to present the written statement in a permanent form, also when in electronic format; harassment protocols; information about the assignment and the identify user undertaking for temporary agency workers; information on equal pay for equal work and on posted workers' rights; and additional information for workers working abroad or coming from third countries. Additionally ETUC, supported by EAEA and EFJ, advocates a "catch-all" clause requiring the provision of essential information relevant to the nature of the work, to address the specific situations of e.g. domestic or voucher workers.

ECSA and ETF jointly draw attention to the more extensive set of written information required for seafarers under Directive 2009/13/EC, and request that a revised Directive should be without prejudice to those rules.

All workers' organisations expressing a view supported provision of the written statement before the employment begins (Eurocadres) or at the start of the employment relationship (ETUC, EAEA, EFFAT, EFJ, and UNI Europa).

Insertion of new minimum rights

CEC and ECA support the proposals in the consultation document.

ETUC, endorsed by EAEA, EFFAT, FEJ and UNI Europa and in part by CESI, support in principle all the new material rights set out in the consultation document, and propose amendments to reinforce them. These include: a complete ban on exclusivity or incompatibility clauses, except in very limited circumstances; a restriction on the reasons for which employers may refuse a request to transfer to a different form of work (additionally from EAEA: no limitation on a worker's seniority before such a request can be made) and the right for the worker to be accompanied by a trade union representative in these discussions, , and additional provisions to sanction the unreasonable failure of an employer to comply with a worker's request to transfer to a different form of work; clarification that probation periods cannot be used to facilitate dismissal and should not be introduced where they do not currently exist.

In addition, ETUC supported by EAEA, Eurocadres, FEJ, and in part UNI Europa and ECA, advocate additional material rights and provisions, principally a ban on zero-hour contracts and an obligation on employers to provide a minimum number of guaranteed hours; a prohibition on split shifts covering more than a working day and the right to decline shifts that are not in accordance with the written statement; a right to disconnect; a right to fair remuneration; a right to collective bargaining for self-employed workers; right to a reasonable notice period and to prevention of unjustified dismissal; and a new general right to fair terms and conditions of employment. ECA additionally proposes that any hours where the worker is at the disposal of the employer must be paid; and that there should be a right to essential training free of charge during paid working time; and minimum advance notice for any changes to work schedules.

Enforcement

Several worker organisations argue for reinforced anti-avoidance measures to be built into the material rights introduced by the revised Directive, such as making it an offence to knowingly understate the amount of guaranteed hours or an obligation to pay workers at a higher rate for hours worked beyond that amount, or to remunerate last minute cancelled shifts or work periods.

ETUC, supported by UNI Europa, advocates increasing financial sanctions so that they become dissuasive and not capping compensation; introducing personal liability for directors and a duty for due diligence; injunctions to enforce the provision of a written statement or the correction of an existing one; collective redress including the right for a worker to be represented by a union in seeking redress; establishing the principle of joint and several liability where more than one entity performs the function of employer.

FIFPro supports the introduction of injunctions to require employers to provide the missing information and favourable presumptions of an employment relationship, proportionate to the missing elements. As regards presumptions, most organisations highlight the 'refutable presumption of employment' mentioned above as a key principle for better enforcement.

Others

Some worker organisations (ETUC, Eurocadres) emphasise that the provisions of the Directive could be implemented by law or by collective agreements.

ETUC requests a clarification that no provision of the Directive can be used to undermine collective agreements, which should take precedence. They advocate introducing a provision for derogations from the obligations in the Directive by means of collective agreements, similar to that existing under Article 18 of Directive 2003/88/EC on working time.

ETUC and UNI Europa advocate inclusion of a non-regression clause in the Directive, specifying that its implementation cannot constitute any ground for reducing any element of worker protection.

Willingness to enter into negotiations

CEC state their willingness to enter into dialogue with the other social partners with the aim of signing an agreement.

ETUC states that, while committed to social dialogue, it does not believe that the conditions exist, in terms of timing and scope, to launch negotiations with EU level employers' organisations about a revision of the Directive. It states that the employer organisations' proposal to negotiate is too limited in scope and too late to lead to a timely revision of the Directive. It calls on the Commission to act expeditiously to propose a revision of the Directive. EAEA, Eurocadres, UNI Europa support this position. CESI calls on the legislator to act where possible if and when social dialogue reaches its limits.

ECA, a non-affiliated sectoral worker organisation, asks to contribute to discussions, should a negotiation be launched.

Employers' organisations

Nine employers' organisations replied to the second phase consultation: Business Europe, European association of craft small and medium-sized enterprises (UEAPME), the European Centre of Employers and Enterprises providing Public Services and Services of general interest (CEEP), the Council of European Employers of the Metal, Engineering and Technology Based Industry (CEEMET), the Association of Hotels, Restaurants and Cafés in Europe (HOTREC), Eurocommerce, the Confederation of European Security Service (COESS), the European Chemical Employers Group (ECEG), the World Employment Confederation - Europe (WEC-Europe).

In addition, two sectoral employers' organisations provided a joint reply with a corresponding employees' organisation: the European Community Shipowners'

Associations (ECSA) with the European Transport Workers' Federation (ETF) and the Employers' Group of Professional Agricultural Organisations in the European Union (GEOPA-COPA) with the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT).

Views on personal scope of the Directive

All organisations expressing a view were opposed to clarifying the personal scope of the Directive by introducing criteria on the basis of which Member States would determine worker status. HOTREC emphasised the importance of flexible and short-term employment relationships in the hospitality sector, and considered that determining criteria at EU level could create legal uncertainty if it conflicted with legislation or collective agreements within Member States. They proposed an alternative wording explicitly excluding self-employed and referring to the existence of an employment contract. CEEMET regarded the proposed criteria as too rigid, and potentially interfering with Member States' discretion in other fields such as social security and taxation.

Most employer organisations were opposed to extending the coverage of the Directive by eliminating the existing exclusions in Article 1.2. HOTREC proposed that they should be augmented by reference to "special national legislation already in place".

Modifications to information package and timing

WEC-Europe strongly supported the proposed extension of the information package. All other employer organisations expressing a view either opposed the modifications to the information package set out in the consultation document in totality, or selectively (CoESS). In the latter case, it is not clear whether those additional elements not mentioned in the response are supported. Concern was expressed that such an extension could add burdens to employers, especially SMEs and micro-enterprises, and that the issues (e.g. overtime, determination of working schedule) were often covered by collective agreements and so did not need to be reproduced in a written statement.

ECSA and ETF jointly draw attention to the more extensive set of written information required for seafarers under Directive 2009/13/EC, and request that a revised Directive should be without prejudice to those rules.

HOTREC considered that the deadline for issuing a written statement could be reduced from two months to one month.

Insertion of new minimum rights

With very limited exceptions, all employer organisations expressing a view were opposed to the inclusion of new material rights in a revised Directive. They argued that such issues were a matter of national competence and that it was not necessary, or even contrary to the principle of subsidiarity, for the EU to act in these fields. CEEMET, HOTREC and WEC-Europe were concerned that the rights designed to limit precariousness (e.g. the right to advance notice, reference hours/days, guaranteed

minimum hours after a certain period) could go beyond minimum standards and could restrict flexibility and hamper competitiveness. HOTREC and CEEMET expressed opposition to the right to request a new form of employment; WEC-Europe considered the matter sufficiently covered in Directive 2008/104/EC on temporary agency work, as concerns their sector. HOTREC states that the employer should be able to choose the maximum duration of the probation period, but seems to be open to a restriction on the duration of probation periods, where these exist.

Enforcement

While WEC-Europe supported reinforcing enforcement of the existing EU social acquis, including combating bogus self-employment and creating a stronger role for Social Partners, the other employer organisations expressing a view were opposed to any changes to the existing provisions on sanctions or enforcement. HOTREC argued that the provision in Article 8(2) of the current Directive that employers should have up to 15 days to remedy a failure of notification to an employee, should be better transposed and utilised.

Others

/

Willingness to enter into negotiations

The three cross-sectoral employer organisations, BusinessEurope, CEEP and UEAPME, expressed readiness to enter into negotiations with the employee representatives. BusinessEurope and UEAPME noted that such negotiations should take into account the needs of differently sized enterprises, especially SMEs and micro-enterprises, and that they should respect the nature of the Written Statement Directive. The sectoral employer organisations generally indicated their readiness to support the cross-sectoral organisations in any negotiation.

3. Results of the public consultation on the European Pillar of Social Rights

The results of the public consultation on the European Pillar of Social Rights have been published as SWD (2017)206.

4. Results of the public consultation for the REFIT evaluation of the Written Statement Directive

The outcomes were published in SWD (2017) 205 final, REFIT evaluation of the Written Statement Directive.

ANNEX 3: WHO IS AFFECTED AND HOW?

1. Practical implications of the initiative

The initiative will apply to all employers, but the scale of action required to comply with it is estimated to be limited in the majority of cases. While employers affected are not more likely to be SMEs than large enterprises, the following indications focus on SMEs, in line with Treaty obligations to avoid overburdening them.

Key obligations for enterprises:

Enterprises will have to ensure the following actions:

- review the written statements they provide to their new workers, including any coming newly within scope of the proposed Directive, and to existing workers on request, with particular attention to (i) the provision of information to the workers previously outside the scope (ii) the provision of the additional information (iii) the changed timeline with the information to be provided at the latest on the day of beginning of the employment relationship;

- if they use this type of work, review their schedule of on-demand work for fulfilling the predictability requirements included in the new initiative;

- ensure that no exclusivity clauses are used; in case they are, modify the organisation of the business to eliminate them;

- review whether any incompatibility clauses are used, and if so whether they are justified by legitimate reasons; if not, modify the organisation of the business to eliminate them;

- review any use of probation periods to ensure they are not excessively long;

- review the training offered to workers and ensure that training required in EU legislation, national legislation or relevant collective agreements is provided to workers free of charge.

It is assumed that the deadline for the indicated actions is 2 years after adoption and entry into force.

All employers will incur costs: fixed-costs of familiarisation and variable costs related to the number of employees that would be covered by an extension of the Directive to include minimum material rights. The one-off cost of familiarisation paid in the first year is expected to be, for SMEs, some 53 EUR. The cost per casual worker being in the range 18-153 EUR, the actual cost will depend on the business model and use of atypical work rather than size of company. Companies that rely to a larger extent on non-standard forms of work will have higher costs.

There is evidence that the burden of a reduced timescale for providing written statements would not be any greater for SMEs than for large enterprises.

The provision of templates will mitigate some of the additional costs.

Concerning training, there is evidence that fewer SMEs offer on-the-job training compared to large companies, largely due to their more limited capacity to do so.

Key obligations for public administration:

Public administrations will have to ensure the following actions:

- review their legal framework to, if needed, ensure that the personal scope of the new directive is ensured;

- review their legal framework to, if needed, introduce the additional information elements relating to the provision of a written statement;

- specifically, produce templates, if not yet available, for the use of employers, and ensure ease of access to information on the relevant legislation and other provisions relevant for the items to be included in the information list (in particular for employers that come newly within scope of the Directive and have limited access to information on their duties, such as employers of domestic workers,);

- review their legal framework to, if needed, integrate the new material rights;

- review the legal framework to, if needed, integrate the enforcement requirements;

- if needed, enhance support to labour inspectorates or other bodies that could receive an increased request due to breaches of additional material rights and additional enforcement provisions;

It is assumed that the deadline for the indicated actions is by 2 years after adoption and entry into force (while ensuring reasonable and adequate dissemination of information and templates to employers and workers suitably in advance of this deadline).

2. Summary of costs and benefits

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
Higher number of workers entitled to written statements	Some 2-3 million more workers have a right to a written statement	
Workers getting more comprehensive information in the written statements	5-31 million workers per year	

Written statements issued on the 1st day of employment	8-16 million workers per year	
Workers getting reference hours and receiving advance notice before an assignment	4-6 million workers	
Workers freed from exclusivity clauses	6-7 million casual and voucher-based workers	29% of part-timers in 2015 were involuntary (source EU-LFS). It can be assumed that most of the involuntary part-timers work less that they would want to because of lack of job opportunities rather than exclusivity clauses, but exclusivity clauses are a contributory factor for involuntary part-time.
Workers getting the possibility to request another form of employment	52 million (some 25% expected to use the right in practice)	
Workers getting the right to a max. duration of a probation period	3-6 million workers per year	
Workers getting the right to mandatory training without deduction from salary	Negligible	
Workers getting better access to redress	All workers whose rights are not respected	
Increased legal certainty for employers	16% of employers	

Indirect benefits

Additional tax revenues from workers enabled to get a second job with another employer	46-185m EUR p.a.	
Additional tax revenues from a 1-3% shift of undeclared work into the formal economy	8m-25m EUR p.a.	
Reduction in social security payments, due to undeclared	4m-24m EUR p.a.	Assuming that reductions equate to

workers entering the formal economy		10-20% of the value of undeclared work brought into the formal economy.
Reduction in social security payments from workers enabled to get a second job with another employer	Unquantified but related to the expected additional 33m-133m extra hours workers per year by workers freed from exclusivity clauses	
Increased productivity, retention, loyalty etc.	16-20% of employers	
Reduced unfair competition	Benefits for some 80-84% of employers who already provide written statements to all workers	
Improved availability of workforce for secondary employers	91,000-363,000 workers available for extra work following ban on the exclusivity clauses	
Additional revenues for secondary employers as result of the above	42-167m EUR	
Improved detection of undeclared work	unquantified	
Improved health and work-life balance of workers	unquantified	
Workers enabled to get a second job with another employer	355-1,424m EUR p.a. increase in gross annual earnings for those workers	
Undeclared work brought into the formal economy	40m-120m EUR p.a.	

II. Overview of costs – Preferred option						
	Workers		Businesses		Administrations	
	One-off	Recurrent	One-off	Recurrent	One-off	Recurrent

1. Extended scope	Direct costs	None	None	852.5m EUR[163] + 114-152m EUR[164]	11-30m EUR[165]	Limited[166]	None
	Indirect costs	None [167]	None [168]	None	Limited[169]	None	None
2. Extended information package	Direct costs	None	None	Included in 1.	Included in 1.	Limited[170]	None
	Indirect costs	None	None	None	Negligible[171]	None	None
3. Shortened deadline	Direct costs	None	None	Included in 1.	Limited[172]	Limited	None
	Indirect costs	None	None	None.	None.	None	None
4.1. Rights to predictability[173]	Direct costs	None	None	Included in 1.	Modest[174]	Limited	None
	Indirect costs	None	None	Depending on employers choices[175]	Depending on employers choices	None	None
4.2.	Direct	None	None	Included in 1.	7-27m EUR	Limite	None

[163] Familiarisation (including e.g. adaptation of written statements to new information package). This total amount represents the average cost per company (53 EUR for an SME and 39 EUR for a larger company) multiplied by the number of all companies in the EU. It is likely an overestimation as mostly companies needing to issue new written statements will need to invest in familiarising with the new legislation.

[164] Cost per written statement: 18-153 EUR for SMEs and 10-45 EUR for larger companies.

[165] As above.

[166] Some costs related to transposition of the Directive – for all actions but not cumulative.

[167] Very limited possibility for some workers to become unemployed.

[168] Social security and/or pension contributions for some workers who were undeclared or bogus self-employed.

[169] Costs could be related to the need to replace workers covered by the directive with others, not covered (or self-employed). It is however unlikely that many employers would do that, just because of the requirements to provide a written statement.

[170] Limited costs related to development of new models and templates, and making information available to employers.

[171] As established through interviews with stakeholders.

[172] As explained in the IA: 12 MS already comply; REFIT study shows no major differences in how burdensome employers consider the timeframe to be, regardless of whether it precedes the employment (BG, PL), is set at one month (DE, FR, IT, SE) or at two months (UK).

[173] Reference hours and advance notice.

[174] Surveyed employers expected some modest additional administrative costs as well as increased labour costs and costs related to reduced workforce flexibility. The extent of the costs will depend on existing practice (many employers already provide those measures) and business models (extent of reliance on non-standard forms of work).

[175] Costs in 4.1 and 4.2. will depend on the business models and strategic management decisions.

Prohibition of exclusivity	costs					d	
	Indirect costs	None	None	None	None	None	None
4.3. Possibility to request another form of employment	Direct costs	None	None	Included in 1.	20-258m EUR	Limited	None
	Indirect costs	None	None	None.[176]	None.	None	None
4.4. Max. duration of probation	Direct costs	None	None	Included in 1.	Limited[177]	Limited	None
	Indirect costs	None	None	None	None	None	None
4.5. Cost-free mandatory training	Direct costs	None	None	Included in 1.	Limited	Limited	None
	Indirect costs	None	None	None.	None.	None	None
5.Enforcement	Direct costs	None	None	Included in 1.	None.[178]	Depending on MS decisions[179]	Depending on MS decisions[180]
	Indirect costs	None	None	None	None	None	Possible[181]

3. The SME Test – Summary of results

[176] The provision does not oblige employers to accept the request.

[177] The new right would only have an effect in the UK, IE and CY – and also in those MS in practice, based on legal precedents, there is already a maximum duration of probation in place.

[178] No new costs for compliant employers.

[179] The proposed measures leave to Member State the choice of institutional setting for establishing the new procedures. When existing institutions are used, costs should be limited.

[180] The proposed measures leave to Member State the choice of institutional setting for establishing the new procedures. When existing institutions are used, costs should be limited.

[181] Possible increase in enforcement-related costs due to a higher number of cases.

(1) Preliminary assessment of businesses likely to be affected	
The revision of the Directive will apply to all employers. It will however particularly affect all employers of employees in the following categories (unless national legislation has brought them within the scope of the Directive): - Employees working <8 hours per week - Employees with contract duration <1 month - Workers of a casual/specific nature There are little data to establish the extent of the use of non-standard work in SMEs as compared to large companies. The survey conducted in the framework of the supporting study[182] found for example that the percentage of SMEs and large companies reporting that they rely on employees working less than 8 hours per week or on workers on demand is very similar while the percentage of SMEs reporting to follow a business model where atypical forms of employees working less than eight hours play an important role is slightly higher compared to large companies. A UK study on zero-hours contracts found however that these contracts are used in 12% of enterprises with less than 20 employees and 28% of enterprises with 20-250 employees compared to 47% of larger companies.[183] An EU study on SMEs established that in 2009, 50% of small enterprises in EU27 employed staff with fixed-term contracts, as compared to 75% for medium-sized and 87% for large enterprises.[184] Sectors that have a prevalence of casual workers are most likely to be affected, e.g. hotel, accommodation & restaurants, construction, agriculture.	Section 2, especially 2.2.3
(2) Consultation with SMEs representatives	
Interviews of employer representatives were undertaken in each of the 28 Member States. Representatives were invited to comment on the impact on SMEs. A survey of employers attracted 347 responses from a diversity of sectors. Of these, 79% were private firms. The breakdown of responses by company size is as follows (all countries combined): • **SMEs (<250) – 68%**, of which:	Annex 2 and 4

[182] Note: the survey targeted employers, who were more likely to rely on atypical workers or flexible working arrangements, to achieve more meaningful answers. Therefore, the survey answers are not representative of a general employer population but specifically relate to employers employing casual workers.

[183] Office for National Statistics (2014), Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours

[184] Jan de Kok et al: Do SMEs create more and better jobs? Zoetermeer, November 2011

- Micro (<10) – 15% - Small (10-49) – 19% - Medium (50-249) – 34% • **Large (250+) – 29%** • The remaining 3% did not answer. The survey showed no major differences between SMEs and large companies with regard to the considered measures. The majority of SMEs in the survey reported that they already provided the required employment information for non-standard workers. While the introduction of ban on exclusivity clauses is perceived by the employers as having a small impact compared to the current situation (approximately 47% of the respondents report no difference in case of implementation of this right), differences are likely to occur when introducing rights related to working time. These however will mainly depend on the extent companies (irrespective of their size) depend on on-demand work. Further information on the results of the survey is provided under point 5 of this Annex. UEAPME was among the three cross-sectoral employer organisations which expressed readiness to enter into negotiations with the employee representatives. UEAPME noted that such negotiations should take into account the needs of differently sized enterprises, especially SMEs and micro-enterprises, and that they should respect the nature of the Written Statement Directive.	
(3) Measurement of the impact on SMEs	
All employers will incur costs: fixed one-off costs of familiarisation and variable costs related to the number of employees that would be covered by an extension of the Directive. With less scope for economies of scale than larger firms, SMEs will incur higher average fixed costs than large firms (53 EUR for an SME and 39 EUR for a large firm) and higher costs per atypical worker than large firms: €18-€153 versus €10-45. The cost range for SMEs (based on two different methods of establishing costs of a written statement: average annual cost per contract and annual average fixed cost per employed person) is an average for all sizes of SMEs. Break-down per size category is as follows: - micro-enterprises: 22-198 EUR - small enterprises: 13-156 EUR - medium enterprises: 18-127 EUR. However, the costs incurred will depend on the business model rather than size of company: companies that rely to a larger extent on non-standard forms of work will	See: Cost sheet below Section 6.2 Section 8.2 and 8.3

bear higher costs. Overall, these costs are minor in comparison with general costs of personnel, which according to 2014 Eurostat data amounted to some 29,000 EUR per employee per year in an SME and 48,000 EUR in a larger company.[185] A minority of affected firms (likely those heavily relying on on-demand workers with exclusivity clauses and no advance notice) will face additional indirect costs related to adapting the business, e.g. HR management time, legal advice, staff training. There is evidence that the burden of a reduced timescale for providing written statements would not be any greater for SMEs than for large enterprises.	
4) Assess alternative options and mitigating measures	
Given the large number of workers in the EU working in SMEs, overall derogations for SMEs are not considered appropriate. However, as specified in section 8.3 the following mitigating measures are considered in order to limit the burdens on companies, and most notably SMEs: 1. Member States are required to develop electronic templates and models of written statements. 2. In micro, small, or medium enterprises, Member States may provide for the deadline to reply to worker's request for another form of employment to be extended from one month to no more than three months and/or 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. 3. Member States are required to make information related to the content of the new directive easily available to workers and employers.	Section 8.3.

[185] SME Performance Review 2017 by DIW-ECON (Personnel costs are made up of wages, salaries and employers' social security costs. They include taxes and employees' social security contributions retained by the employer, as well as the employer's compulsory and voluntary social contributions.)

4. Comparison of administrative costs to employers: SME v large firms

The table below provides an example of the **average cost incurred in the first year** following the revision of the Directive by an SME and a large company under different scenarios.

	SMEs	Large firms
Average fixed cost per enterprise	€ 53	€ 39
Cost per casual worker	€ 18 - € 153	€ 10 - € 45

Costs in first year

	SMEs		Large firms	
Staff turnover p.a.	**10%**	**20%**	**10%**	**20%**
Scenario (B) (Options 1,2,3,4)				
Average cost of an enterprise with 0 atypical workers	€ 53	€ 53	€ 39	€ 39
Average cost of an enterprise with 10 atypical workers	€ 71 - € 206	€ 89 - € 359	€ 49 - € 84	€ 59 - € 129
Average cost of an enterprise with 50 atypical workers	€ 143 - € 818	€ 233 - € 1,583	€ 89 - € 264	€ 139 - € 489
Average cost of an enterprise with 250 atypical workers	€ 503 - € 3,878	€ 953 - € 7,703	€ 289 - € 1,164	€ 539 - € 2,289
Scenario C (Options 2,3,4,5)				
Average cost of an enterprise with 0 atypical workers	€ 53	€ 53	€ 39	€ 39
Average cost of an enterprise with 10 atypical workers	€ 53	€ 53	€ 39	€ 39
Average cost of an enterprise with 50 atypical workers	€ 53	€ 53	€ 39	€ 39
Average cost of an enterprise with 250 atypical workers	€ 53	€ 53	€ 39	€ 39
Scenario D (Options 1,2,3,4,5)				
Average cost of an enterprise with 0 atypical workers	€ 53	€ 53	€ 39	€ 39
Average cost of an enterprise with 10 atypical workers	€ 71 - € 206	€ 89 - € 359	€ 49 - € 84	€ 59 - € 129

Average cost of an enterprise with 50 atypical workers	€ 143 - € 818	€ 233 - € 1,583	€ 89 - € 264	€ 139 - € 489
Average cost of an enterprise with 250 atypical workers	€ 503 - € 3,878	€ 953 - € 7,703	€ 289 - € 1,164	€ 539 - € 2,289

Costs in future years (per year)

	SMEs		Large firms	
Staff turnover p.a.	**10%**	**20%**	**10%**	**20%**
Scenario (B) (Options 1,2,3,4)				
Average cost of an enterprise with 0 atypical workers	€ 0	€ 0	€ 0	€ 0
Average cost of an enterprise with 10 atypical workers	€ 18 - € 153	€ 36 - € 306	€ 10 - € 45	€ 20 - € 90
Average cost of an enterprise with 50 atypical workers	€ 90 - € 765	€ 180 - € 1,530	€ 50 - € 225	€ 100 - € 450
Average cost of an enterprise with 250 atypical workers	€ 450 - € 3,825	€ 900 - € 7,650	€ 250 - € 1,125	€ 500 - € 2,250
Scenario C (Options 2,3,4,5)				
Average cost of an enterprise with 0 atypical workers	€ 0	€ 0	€ 0	€ 0
Average cost of an enterprise with 10 atypical workers	€ 0	€ 0	€ 0	€ 0
Average cost of an enterprise with 50 atypical workers	€ 0	€ 0	€ 0	€ 0
Average cost of an enterprise with 250 atypical workers	€ 0	€ 0	€ 0	€ 0
Scenario D (Options 1,2,3,4,5)				
Average cost of an enterprise with 0 atypical workers	€ 0	€ 0	€ 0	€ 0
Average cost of an enterprise with 10 atypical workers	€ 18 - € 153	€ 36 - € 306	€ 10 - € 45	€ 20 - € 90
Average cost of an enterprise with 50 atypical workers	€ 90 - € 765	€ 180 - € 1,530	€ 50 - € 225	€ 100 - € 450
Average cost of an enterprise with 250 atypical workers	€ 450 - € 3,825	€ 900 - € 7,650	€ 250 - € 1,125	€ 500 - € 2,250

5. SMEs analysis: employer survey results

5.1. Use of non-standard work between large companies and SMEs

The use of non-standard forms of employment is mostly concentrated in certain sectors, such as hotels, accommodation and restaurants, construction and agriculture. The construction and the accommodation and food sectors are included in the most important SME sectors in terms of employment.[186] In these sectors, SMEs account for a large share of employment compared to large firms. Although this could lead to the conclusion that atypical forms of employment are more widespread among SMEs, no clear relationship exists: evidence from the UK shows that despite the use of contracts with no guaranteed number of hours is concentrated in the accommodation and food sector[187], large firms are proportionately more likely than SMEs to employ one form of casual worker – zero-hour contract workers.[188]

Evidence collected during the study has enabled the complex relationship between the use of atypical forms of employment and the size of the company to be clarified to some extent. The employer survey included questions on work organisation, asking whether the firm strongly relies on employees with different type of atypical forms of employment. The respondents provided the following evidence:

- more than 75% of companies strongly relying on employees working less than 8 hours per week are SMEs;
- almost 80% of companies strongly relying on employees working less than one month are SMEs;
- approximately 70% of companies strongly relying on on-demand employees are SMEs.

Despite that, the difference is less significant when analysing the percentage of companies reporting that they strongly rely on atypical forms of employment for different size classes:

- the percentage of SMEs and large companies reporting that they rely on employees working less than 8 hours per week or on workers on demand is very similar;
- conversely the percentage of SMEs reporting to follow a business model where atypical forms of employees working less than eight hours play an important role is slightly higher compared to large companies.

Based on the survey, it is not therefore possible to determine a clear relationship between the use of standard forms of employment and the size of the companies.

[186] European Commission (2016), Annual report on European SMEs 2015/2016

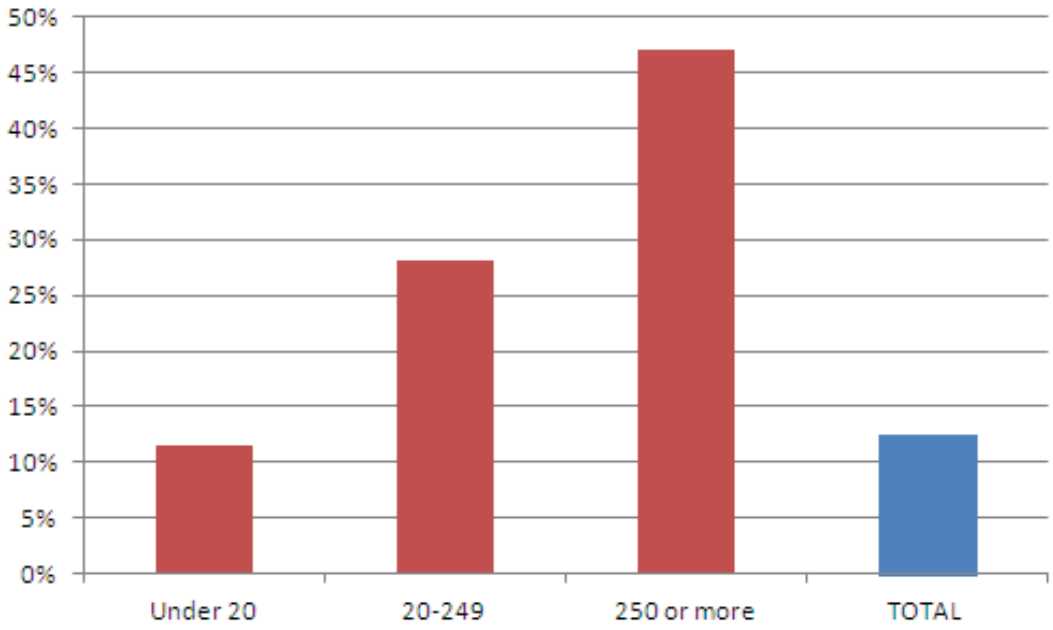
[187] https://www.istat.it/en/files/2015/04/Item-2.4-Measurement-of-zero-hours-contracts_UK1.pdf

[188] Department for Business, Innovation & Skills (2014), Final Impact Assessment: Banning exclusivity clauses in zero-hours contracts.

A previous study in the UK offers more robust evidence in the form of a report based the Office for National Statistics Business Survey. The survey found that:

- Around 1.4m employees have non-guaranteed hours contracts (NGHCs);
- 47% of large firms (250 or more employees) use NGHCs;
- 28% of medium-sized firms (20-249 employees) use NGHCs;
- 12% firms with <20 employees use NGHCs;
- 13% of all firms use NGHCs.
- when firms with <250 employees use NGHCs, they have a larger proportion of their workforce on NGHCs compared to larger businesses[189]

Figure: Proportion of UK businesses using NGHCs by size of business



1. **Application of considered measures**

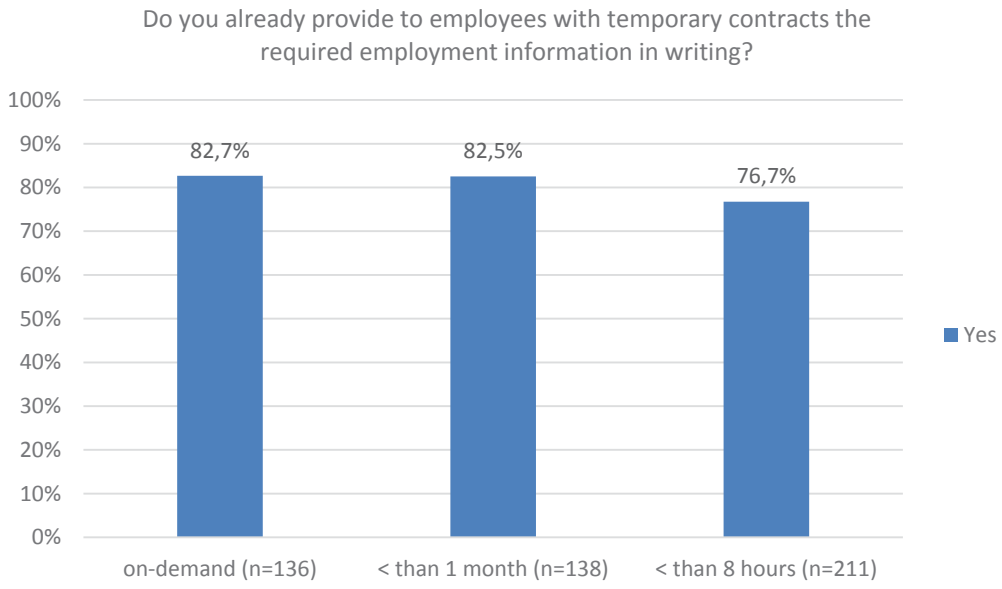
The REFIT study reports that the costs to comply with the Directive were not perceived by SMEs or large firms to be burdensome and were mostly considered to be business-as-usual costs

According to the REFIT study, no evidence of disproportionate burden for SMEs is reported in case of an extension of the Directive. The majority of SMEs report that they would provide the same level of information and thus incur associated costs even in the absence of any minimum requirements: between 61% and 72% of survey respondents

[189] Office for National Statistics (2014), Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours

replied that in the absence of minimum requirements the organisation would still provide the required level of information of the employees.

This result is supported by the employer survey carried out during this study. Evidence collected shows that the majority of SMEs already provide the required employment information for atypical workers. The main results of the employer survey are provided below.



Source: CSES and PPMI

Evidence suggests a more difficult application of minimum rights for atypical forms of employment. While a restriction of exclusivity clauses is perceived by the employers as having a small impact compared to the current situation (approximately 47% of the respondents report no difference in case of implementation of this right), differences are likely to occur when introducing rights related to working time.

The ability to apply minimum rights is to a great extent dependent to the costs and benefits associated to the introduction of each policy option.

Reference hours

In terms of benefits, companies that have introduced reference hours reported a reduction of the number of complaints for casual workers and improved their planning processes of workforce allocation tasks. On this point, there was little difference in the responses from SMEs and large firms. In terms of labour costs, the key factor is the business model used by the company rather than the company's size: more than 50% of the companies strongly relying on work provided on-demand report a relevant increase in the labour costs, while companies where the number of on-demand workers is limited or not-existent report no or moderate increase of the labour costs.

Reasonable advance notice

Employers report that the introduction of a minimum advance notice of a work assignment reduced the flexibility of the labour market and required SMEs to change their workforce organisation planning. This was confirmed by employers' organisations, which highlight that sometimes it is the nature of the work that requires flexibility in workers' availability. For example, restaurants and hotels might require on-demand employees in order to address unexpected issues. Therefore introducing of a minimum advance notice might particularly affect the work organisation of these companies. In this respect, the employer organisations report that SMEs relying strongly on on-demand workers will be more affected than SMEs where the number of on-demand workers is limited.

Influence of minimum rights in recruitment decisions

Employers report that the introduction of a minimum set of rights for atypical workers is likely to have a negative impact on the number of casual workers employed. The employer survey reports that changes in recruitment decisions are likely to occur as a result of the introduction of reference hours and a minimum advance notice. Conversely, the restriction of exclusivity clauses is expected to have a marginal impact on the recruitment strategies of employers.

However, the introduction of these rights will not automatically result in a displacement of atypical workers to informal agreements or to self-employed positions, as suggested by several employer representatives: according to the survey, only one respondent out of five believes that the introduction of these rights is likely to lead to an increase of informal work. The only exception is related to the introduction of a minimum advance notice, where slightly less than 30% of employers report that casual workers could be replaced by informal work or push atypical workers into self-employment. However, retaining the flexibility for employer and worker to agree to take up a work assignment with less than the set advance notice could reduce the scale of this effect, as could variable notice periods by sector determined in national legislation or collective agreements.

ANNEX 4: ANALYTICAL METHODS

This Annex describes methods used in the external study underpinning the Impact Assessment.

The study "Study to support Impact Assessment on the Review of the Written Statement Directive" was carried out by CSES and PPMI.

1. Research stages

EU-level research

Review of various EU-level documents (e.g. Eurofound studies), analysis of Eurostat data, and consultation of some EU-level stakeholders.

National research

The research team has carried out extensive national level research **in each of the 28 EU Member States.**

Two stages of national research

The analysis has been carried out in **two stages** to ensure the **quality** of evidence gathered.

The first stage aimed at establishing a **clear baseline** against which the policy options/sub-options could be assessed. This analysis drew on the desk research undertaken in each country, namely:

- extraction of country-specific findings from the REFIT evaluation and other EU-level research;
- labour market data on the situation in the Member State, gathered mainly from Eurostat and/or national statistical offices;
- incidence of categories of workers covered by Option 1;
- identification of key groups of most numerous and most vulnerable workers;
- identification of current relevant Member State legal frameworks (i.e. governing extension of the provisions of the current Directive to other types of workers, removal of the possibilities to exclude certain workers (Option 1), and extension of basic rights in employment relationships (Option 5);
- identification of current Member State legal frameworks with respect to Options 2, 3, and 4;
- review of relevant studies and reports at national level.

Based on the collected evidence of the current situation, the research team developed an **impact assessment framework** for the **second stage** of the national research. The analysis relied on further desk research and consultations undertaken in each country, namely:

- effects of the current Directive;

- the impact of current labour market practices on employees, employers, the state as well as higher level impacts (e.g. on public finances, productivity and competitiveness, fundamental rights etc.);
- current Member State legal framework (with respect to Options 1, 2, 3, 4, and 5) impacts on employees, employers, the state as well as the higher level impacts;
- likely evolution of the baseline scenario and its possible impacts;
- interviews with employees' representatives;
- interviews with employers' representatives;
- interviews with other relevant national stakeholders.

Two levels of national research

The national level research consisted of a **core-level research**, covering **each of the 28 EU Member States**, and an additional more **in-depth research**, covering **selected 10 Member States**. The core research involved desk research and at least **2 interviews** – one with a representative of employers and one with a representative of employees. The additional more in-depth research involved at least 3 extra interviews in addition to the minimal 2 interviews (resulting in at least **5 interviews** in total).

Country selection for a more in-depth research

The selection of countries for a **more in-depth research** was based on the following **criteria**:

- **Extending or planning to extend the Directive** to cover new and atypical forms of employment (Option 1) and introduce basic rights (Option 5). Such Member States would therefore be able to reflect on their experience, including effects on employees, employers and institutions responsible for dealing with labour disputes.
- **Labour market innovation/pioneering.** The experience of countries that lead the way in labour market innovations should also be analysed as it gives many observation points, which could be used for other countries.
- **Different socio-economic models**. This composite indicator includes many important contextual features that might influence labour relations and prevailing working conditions.
- **Geographical location** criterion to have a more or less equal coverage of countries across the EU.

Countries selected for additional research (including specific issues)

Nr	Selected country	Socio-economic models	Areas of coverage
1	Germany	CME[190]	• mini-jobs, • marginal part-time employment • longest minimum notice period • highest employment protection legislation index-

[190] CME: Coordinated market economy

			permanent work
2	France	CME	• casual work • voucher-based work • lowest maximum duration of probation • longest minimum notice period • highest employment protection legislation index-permanent work and temporary work
3	Italy	Hybrid	• casual work • voucher-based work • highest employment protection legislation index-permanent work and temporary work
4	Slovakia	Hybrid	• casual work • platform (crowd) workers • longest minimum notice period • highest employment protection legislation index-temporary work
5	Hungary	LME[191]-like (CEE)	• casual work • voucher-based work • longest minimum notice period
6	Netherlands	LME-like	• casual work • platform (crowd) workers • voucher-based work • lowest maximum duration of probation • longest minimum notice period • highest employment protection legislation index-permanent work
7	Spain	LME-like	• fixed-term workers • casual workers (zero hours) • platform (crowd) workers (planned) • voucher-based work (similar to it) • highest employment protection legislation index-temporary work
8	Poland	LME-like	• civil law contracts – recognised as service providers, rather than employees/workers • highest employment protection legislation index-permanent work
9	Denmark	LME	• labour market innovations, • flexicurity • longest minimum notice period • lowest maximum duration of probation
10	UK	LME	• labour market innovations

Management of national research

[191] LME: Liberal market economy

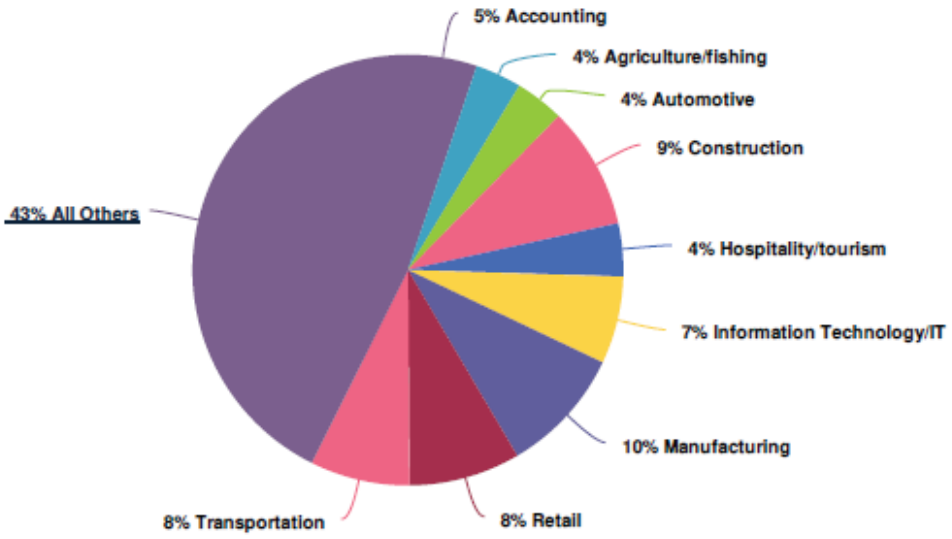
The national research has been carried out by **national experts**, **experienced** in delivering national research for similar studies for the EU institutions. Most of them have degrees and extensive experience in Law, Sociology, or Economics and hold a Lecturer or Professor positions within universities.

The work of the pool of experts has been **quality managed**, which involved: developing **templates** and accompanying **guidance** for data collection, **briefing** by skype and in person to ensure consistent understanding of the required outcomes, continuous **communication** to solve any emerging issues. In addition, the research team carried out extensive **quality assurance and gap analysis** of the received inputs, followed by **clarifications** and extra questions to gather **comprehensive clean data** for each country.

Employer survey

The research team has also carried out a **survey of employers** to collect data to better understand the **costs and benefits** that employers might experience if they had to provide their atypical workers with key employment information in writing and additional rights: a right to reference hours, a minimum notice period, a possibility to request a different form of employment, a right to a maximum duration of probation, and forbidding exclusivity clauses in employment contracts.

The survey was carried out **online** and accumulated a total of **347 responses** from individuals in the **decision making positions** in their companies from diverse sectors of the economy as shown in the figure below, which were more likely to rely on atypical workers or flexible working arrangements.



The survey has been carried out in **5 selected countries**: the United Kingdom, Germany, Italy, Poland and Slovakia. These countries are of a considerable population size[192] and importance, which have gone beyond the current Directive requirements in regulating

[192] Apart from Slovakia.

new and atypical workers. In addition, these Member States represent different socio-economic models and geographical areas. Therefore, the chosen countries could provide the needed data in terms of **quantity, depth and variety**. English version of the questionnaire was translated into German, Italian, Polish, and Slovak by professional and experienced native-speaker translators.

The total number of responses is split between the five countries surveyed in the following way:

- Germany – 83 responses
- Italy – 82 responses
- Poland – 81 responses
- UK – 80 responses
- Slovakia – 21 responses.

The breakdown of responses by company size is as follows (all countries combined):

- **SMEs (<250) – 68%**, out of which:
  - Micro (<10) – 15%
  - Small (10-49) – 19%
  - Medium (50-249) – 34%
- **Large (250+) – 29%**
- The remaining 3% did not answer.

Gaps on trends and uncertainties

Data on past and current trends of atypical employment was obtained from established sources: principally ILO and Eurofound. In addition, international and national studies, EU-wide surveys (EU LFS and Flash Eurobarometers from Eurostat), as well as contributions from national experts have been analysed.

Categorisation and identification of trends of employment **not exceeding one month** were difficult because no consistent and reliable data on the number of workers with such contracts or employment relationships are available across EU-28 and very often not within Member States. Therefore, more general trends of fixed-term and part-time employment have been used. No exact trends with regard to employees working **no more than 8 hours per week** could be identified either, because they are rarely distinguished separately in labour market data available in the Member States. This category of workers might be covered by other categories, such as domestic work, voucher-based work or casual work.

There is major uncertainty with regard to future trends of **crowd/platform employment**, because it largely depends on technological progress and digital management, business

decisions, and national regulatory responses, which are currently evolving. So, the anticipation of future trends of this new form of employment is highly speculative. Uncertainties also exist with regard to **casual work**. Not all Member States make a distinction between very short fixed-term work and casual work, which also might be linked to informal or undeclared work and overlap with voucher-based work or platform work. Therefore, no precise trends in the development of casual work could be distinguished. Based on the information available, trends in the development of on-call work and intermittent work have been identified.

2. Approaches used to estimate numbers of non-standard workers

This section provides an overview of the methodological approach taken to calculate the different types of atypical workers. Since data are not available for most forms of employment analysed in this study, the overall population has been estimated using a variety of sources:

- Eurostat Labour Force Survey provided information on the number of employees and the number of people in employment broken down by country and size of the company;
- 6th European Working Condition Survey which provides information on the percentage of workers working less than eight hours;
- ILO statistics which present estimates on the percentage of domestic workers;
- National level statistical databases.

If no information was available assumptions were made, supported as far as possible by the qualitative evidence collected during the study.

Domestic workers

There are no official statistics providing the number of domestic workers broken down by country. Domestic work is very difficult to capture and characterised by high share of informal work.[193] This number has been estimated using the following sources of information:

- Eurostat – Labour Force Survey (EU LFS) which provides information on the number of workers employed;[194]
- The ILO carried out a study in 2013 which provides information on the Number of Domestic workers and on domestic workers as a percentage of total employment;[195]
- Aggregated country fiche data collected from various sources.

[193] ETUC (2012), Decent Work for Domestic Workers. The state of labour rights, social protection and trade union initiatives in Europe.
[194] lfsa_egan2
[195] ILO (2013), Domestic workers across the world: global and regional statistics and the extent of legal protection/International Labour Office, Appendix II: table A2.1

The total number of domestic workers is calculated by multiplying the number of workers by the share of domestic workers in total employment. The number of domestic workers obtained has been triangulated with aggregated data extracted from the country fiches from national level sources. The numbers estimated through both methods have been merged, meaning that the estimated number of domestic workers in each country shows the average point between the two methods. In case of missing data (e.g. Estonia and Sweden) the share of domestic workers across EU-28 (provided in the ILO study) was multiplied with the total number of workers provided by the Labour Force Survey from Eurostat.

Main assumption related to this approach:

- Data have not been calculated broken down by size of company. It is assumed that all domestic workers are employed in SMEs (i.e. companies with less than 250 employees).

Affected population. The number of domestic workers affected by the extension of the Directive has been informed by the legal mapping carried out at national level. In Member States where domestic workers are already covered, the extension of the Directive was expected to have no impact. Conversely in Member States where domestic workers are not covered, it was assumed that an extension of the Directive would affect all domestic workers. Whilst domestic workers have different "employment status", it was assumed that an extension of the Directive would affect all domestic workers. This conservative approach allowed to identify the largest possible population affected by the Directive.

Finally, a number of countries reported that domestic workers are possibly covered by the Directive. For these countries a percentage of workers newly covered was assumed through a mix of evidence collected by experts, expert judgments and estimation.

Platform workers

Conventional statistical definitions do not capture many relevant aspects of this type of work. While traditional classifications usually focus on the employment status of the worker, digital platform work can include different forms of employment. Indeed, evidence collected by national researchers showed that many platform workers are legitimately self-employed, i.e. fall outside the scope of the Directive. So far, it is far from clear how "employment status" within digital platforms can be captured in this framework (i.e. assumptions are required).
Given the nature of platform activities, meaningful measures should take into account employment levels at a single point in time or correspond to an annual average, rather than capturing whether this type of work has been carried out at any time during for example the previous year, which is the method generally used in the existing sample surveys. The reason is that there is a high risk of double-counting. Currently only a small number of surveys have tried to estimate the number of platform workers.
For this study the percentage of platform workers has been informed by a number of studies carried out both in the US and in Europe. Main results extracted from the US literature on platform work:

- Katz and Krueger (2016) calculate that 0.5% of workers in 2015 were providing services through online intermediaries, such as Uber and Task Rabbit.[196]
- Harris and Krueger (2015) estimated the number of platform workers based on the frequency of Google searches for terms related to online intermediaries. According to this study 0.4% of the employed work with an online intermediary.
- Farrell and Greig (2016) estimate 0.6% of the working-age population (representing approximately 0.4% of the workforce). The method used is based on the frequency of bank deposits from online work platforms.

A small number of available studies on EU-wide surveys have also been analysed:

- The CIDP (2017) interviewed a nationally representative sample of 5,019 UK adults aged 18 to 70 in the UK. 4% of employed (excluding pure selling activities, e.g. eBay and Airbnb) reported to have used online platforms in the previous 12 months.[197] Only 25% of this 4% reported that this was their main job, and 58% reported that they are permanent employees and see the gig-economy as a supplements income. If one were to assume the 25% figure as a basis for calculating an approximation of a 'gig employment status', then one would arrive at a figure of 1% of the employed, i.e. 1% of employed people in the UK had a gig employment status at some time in 2016.
- Huws et al (2016) found that between 5% and 9% of the online population were engaged in some type of crowd work in UK, Sweden, Germany, Austria and the Netherlands in the first two quarters of 2016. According to the survey this accounted for more than half of all income for 2.4% of the respondents in Austria, 2.6% in Germany, 1.7% in the Netherlands and 2.8% both in the UK and Sweden.
- McKinsey Global Institute conducted an online survey in the USA and a few EU countries[198] (and extrapolated the results to EU15). According to this study 15% of independent earners used online platforms, i.e. corresponding to approximately 3%-5% of the working age population.[199]

The number of platform workers is calculated by multiplying the share of platform workers with the number of workers employed (provided by Eurostat in the Labour Force Survey).[200] Based on the evidence collected from US and EU-level sources, it can be

[196] The authors conducted a version of the Contingent Worker Survey (CWS) to track alternative and nonstandard work arrangements using the RAND American Life Panel. This survey is the main survey used by the US Labour of Statistics for tracking alternative and non-standard work. The authors report that the estimate required many caveats.

[197] Given the nature of the work (short weekly hours, short employment duration, and usually very marginal activities), this figure is likely to be in excess compared to the figures recorded at a single point of time, i.e. they cannot be compared.

[198] UK, France, Sweden, Germany and Spain

[199] This figure cannot be compared to the single point of time method used by Katz and Krueger (2016), which is the most appropriate one. However According to Eurofound this figure is "highly unlikely" that it would amount to more than 1% of the employment population measured at a single point of time

[200] lfsa_egan2

reasonably assumed that the number of platform workers at a single point of time varies between 0.5% (lower bound) and 1% (upper bound) for most European countries.[201]
This approach implies strong assumptions:

- the same use of online platforms between the US and Europe;
- each Member State has the same share of platform workers out of the total number of workers (i.e. use of technologies etc. across countries).

Affected population. The estimation of the affected population was based on the use of legal mapping, assumptions and evidence collected from the employer survey. The legal mapping allowed the Member States where platform workers are currently not covered by the Directive to be identified. This was informed by the REFIT evaluation and updated by the national experts through their national research.
The second step required was to make a clear assumption in order to determine the share of platform workers covered by the Directive.[202] It was assumed that the extension of the Directive would have an impact only on platform workers working less than eight hours a week. Based on this assumption the share of platform workers working less than eight hours was applied. This evidence was collected through the employer survey carried out in the context of this study.

Voucher-based workers

Voucher-based work, i.e. a form of employment where an employer acquires a voucher from a third party to be used as a payment for a service from a worker, rather than cash, is becoming a more and more an established feature of European labour markets. However, quantitative data on voucher work are very difficult to collect. This is partly due to the different legal frameworks and different modes of operations applied in each Member State. Therefore statistical data in this area should be assessed very carefully and considered only as an indication of the use of vouchers in the country.
The study identifies voucher-based workers in eight countries, namely Austria, Belgium, Greece, France, Croatia, Lithuania, Netherlands and Slovenia. Italy used to make extensive use of voucher-based workers (latest statistics estimated more than one million people working through vouchers); however this form of employment has been recently banned.
For each country bottom up data/estimates have been collected. Data have been provided either by national level experts or by the ICF 2016 study entitled "Social Pillar – Quantifying atypical employment in the EU Member States", which provides national level information or estimates on the number of voucher-based workers across Europe. Indeed, the collected data show a wide range of limits, with different units of analysis and definitions. With regard to the first issue, the unit of analysis considered was the number of workers. Where the number of voucher-contracts were provided (e.g. Croatia), one worker per contract was considered. Indeed, this assumption is likely to clearly overestimate the number of workers in the country. However, it also allows the highest possible number of voucher-based workers affected by the extension of the Directive to be considered. The use of top-down estimations was also considered: however the

[201] This assumption is supported by Eurofound (2017) Aspects of non-standard employment in Europe. The study assessed the comparability of the patchy evidence provided by international studies and surveys on platform work.
[202] As stated above, platform workers could legitimately be self-employed and therefore fall outside the scope of the Directive.

substantial differences of the legal frameworks and implementation in each Member States led to the decision to use a bottom-up approach.
The estimated number of voucher-based workers was split through between SMEs and large companies using the European Working Conditions Survey.[203]

Affected population. The affected population was estimated through the legal mapping, which allowed the Member States where voucher-based workers are currently not covered by the Directive to be identified.

Employees working less than one month

Employees working less than month include a variety of workers hired through different temporary contracts. Official statistics for this category of workers are available from the EU LFS from Eurostat, which provides the number of temporary workers disaggregated by country and duration of the contract.[204] Data gaps for 2016 have been identified in seven countries (AT, CY, DE, LT, LV, MT and RO). In these countries the population has been estimated by multiplying the number of employees in each Member State with the share of employees working less than one month in EU-28.

In addition, data have been broken down by size of company using the 6th European Working Condition Survey (EWCS) carried out by Eurofound, which provides information on the share of SME and large companies by country.[205]

Affected population. The affected population was estimated through the legal mapping, which allowed the Member States where employees working less than one month are currently not covered by the Directive to be identified.

Employees working no more than 8 hours a week

Employees working no more than 8 hours per week tend not to be identified separately in labour market statistics. Therefore it has been necessary to estimate the number of workers falling under this category. It was done using two main sources of information: (i) the EU Labour Force Survey from Eurostat and (ii) the 6th EWCS, which collects microdata on the number of hours work per week by employees in their main job.[206] The share of people working between one and seven hours has been multiplied by the total number of employees broken down by size class provided by Eurostat.

Affected population. The affected population was estimated through the legal mapping, which allowed the Member States where employees working less than one month are currently not covered by the Directive to be identified.

Casual workers

[203] Q16b of the survey: "How many employees in total work in your [IF Q15a ANSWERED: company or organisation] [IF Q15b ANSWERED: business]?"
[204] Temporary employees by duration of the contract (1000), lfsa_etgadc
[205] Q16b of the questionnaire: "How many employees in total work in your [IF Q15a ANSWERED: company or organisation] [IF Q15b ANSWERED: business]?"
[206] Q24 of the questionnaire: "How many hours do you usually work per week in your main paid job?

The heterogeneous and often marginal nature of this form of employment makes it difficult to collect robust and consistent data across countries. The availability of data is limited, usually difficult to compare and not always based on reliable data collection methodologies. Therefore the on-call contracts (including zero-hour contracts) and intermittent workers have been aggregated, providing estimates on the total number of workers with an employment relationship of casual nature.

The approach used to determine the number of casual workers is based on the following steps:

- the first step involved mapping Member States where casual employment contracts are allowed. This evidence was collected through desk research and interviews with national stakeholders;
- subsequently, national level statistics were scrutinised to identify available information on the number of casual workers. The main source of information was the national level statistics collected in the ICF national level reports quantifying atypical employment in the EU Member States.[207]

Some countries provided information in terms of number of contracts (e.g. SK) while other countries provided the number of people in working relationships of casual nature. This required to assume that each contract corresponded to a different person, i.e. if a country reported 300,000 contracts signed we assumed that it corresponded to 300,000 people. Given the nature of the work, typically "on-demand", this is likely to overestimate the number of workers with such type of working relationships. However it allows the highest possible number of casual workers in Europe to be determined.
As for voucher-based workers, comparable data on this form of employment are particularly difficult to collect. Casual workers are governed by different rules and definitions. Therefore the numbers collected and analysed during the study should be regarded as indicative.

Affected population. The affected population was estimated through the legal mapping, which allowed the Member States where employees working less than one month are currently not covered by the Directive to be identified.

3. Impact assessment methods

The impact assessment looked at 5 policy measures:

- Measure 1: Extension of the Directive to atypical workers
- Measure 2: Strengthening information package
- Measure 3: Reducing the deadline for provision of information
- Measure 4 New minimum rights for all workers
- Measure 5: Enforcement

The following assumptions were used in establishing the impacts of the measures:

[207] ICF (2016) "Social Pillar – Quantifying atypical employment in the EU Member States", unpublished

Measure 1: extension of the Directive to atypical workers	
Population covered by any extension	National legal analysis determined whether national policy currently excludes certain types of workers from the scope of the Directive. The analysis then considered the number of workers currently excluded that would be brought into the scope of the Directive: • Employees <8 hours per week (in countries where they are currently excluded by national legislation) • Employees with contracts of <1 month (where currently excluded) • Employment relationship of a casual nature (where currently excluded) • Employment relationship of a specific nature (where currently excluded) Within the "casual" category, some types were specifically identified: voucher-based, domestic workers, platform workers. Data were gathered on the number of each type (see separate note). Some data on the number of employees of specific nature were gathered (Annex 1) but not taken into account in the analysis as they are relatively few in number and not always well defined. Many are covered by separate agreements, e.g. diplomats, seafarers, civil servants. Some assumptions were made as to whether some types of workers are i) currently covered, and ii) would be covered. This was necessary because of: i) lack of clarity/consistency over employment status of such workers; ii) uncertainty over current legal coverage (e.g. if not specifically recognised in law).
Cost of familiarisation	Costs of familiarisation are covered under Measure 2
Cost of providing statements	• Number of workers that would be newly covered x unit cost • Unit cost based on REFIT, updated in line with inflation. • Differentiation between SMEs and large employers • Upper bound and lower bound per statement (based on REFIT)
Measure **2: strengthening information package**	
Population covered by any extension	• All companies except in countries that already require employers to provide all four additional types of information (probation, social security, etc.): two countries excluded on this basis: Cyprus, Greece
Cost of familiarisation	• Unit cost based on unit costs of familiarisation for the REFIT Working Time Directive evaluation – updated in line with inflation • Unit costs differentiated between MS • Unit costs differentiated between SMEs v large companies • Cost = number of employers x unit cost

Cost of providing statements	Zero. Statements for existing employees would not need to be updated (unless employees request – expected to be negligible)
Measure **3: reducing the deadline for provision of information**	
Population affected - firms	• Number of firms in countries that have both not yet adopted the option • Differentiate: SMEs + large companies
Population affected – employees	• Number of employees previously + newly covered by an extension to the Directive and benefitting from the right to a reduced deadline, i.e. in countries that have not reduced the deadline to: i) 1 month; ii) 15 days; iii) 1st day or earlier • Annual number of employees benefitting in practice (i.e. new starters) = 10-20% of total employees covered (assumed rate of staff turnover per year) • Number of employees <1 month who would benefit from a deadline of i) 15 days; ii) 1st day compared to current situation (i.e. employees who no longer leave without receiving one)
Cost of familiarisation	Additional costs to employers from shortening the deadline assumed to be negligible because: • 22 Member States have already reduced the deadline to one month or less • Nearly all employers responding to the survey reported that they already provide written statements within one month, even in the UK (where the deadline is two months) • REFIT study found that shorter timeframes were not considered by employers to be particularly burdensome
Cost of providing statements	Zero. This does not bring additional employees into the scope of the Directive. For public authorities: Qualitative analysis only. Costs will mostly only arise due to provision of templates, information and enforcement, and can be regarded as marginal.
Measure 4 New minimum rights for all workers Measure **4.1 : reference hours, minimum advance notice)**	
Population affected - firms	• Number of firms in countries that have both not yet included casual workers under the Directive and not adopted the options • Differentiate: SMEs + large companies
Population affected – employees	• Number of employees in countries that have both not yet included casual workers under the Directive and not adopted the options • Estimated number: lower range + upper range
Cost of familiarisation	• Unit cost based unit costs of familiarisation for Working Time Directive evaluation – updated in line with inflation • Unit costs differentiated between MS • Unit costs differentiated between SMEs v large companies • Cost = number of employers x unit cost BUT: cost of familiarisation is <u>not</u> then aggregated with other Measures (in order to avoid double counting).

Cost of providing statements	Zero. These options by themselves do not bring additional employees into the scope of the Directive.
Measure**4.2: exclusivity clauses**	
Population affected - firms	• Number of firms in countries that have both not yet included casual workers under the Directive and not adopted this option • Differentiate: SMEs + large companies
Population affected – workers	• Number of employees in countries that have both not yet included casual workers under the Directive and not adopted this option • Estimated number: lower range + upper range
Cost of familiarisation	As for Measures 4.1
Cost of providing statements	Zero. This does not bring additional employees into the scope of the Directive.
Population affected – zero-hour workers	• Assumed that the most important effects of prohibiting exclusivity clauses will be for on-demand / zero hour contract workers rather than casual workers in general. • National research identified countries that allow/prohibit zero hour contracts • National research identified number of zero hour contract workers • 8 countries make wide use of zero-hour contracts • Number of zero hour contract workers gathered from national sources in those 8 countries • National research identified existing prohibitions on exclusivity clauses in those 8 countries; Denmark thus excluded from the analysis (already prohibits exclusivity clauses)
Effects for zero-hour workers (in 8 countries)	Previous research in the UK identified: • % of zero hour contract workers subject to exclusivity clauses; • % of those workers that would like a 2nd job but are prevented = 6% • Median number of hours worked by zero hour contract workers with a 2nd job = 7 hours per week • Median hours per week that a zero-hours worker with a 2nd job is not available to the main employer (above and beyond usual hours) = 4 hours per week • Reorganisation costs for main employer due to non-availability of zero-hours worker with a 2nd job = 14% of labour costs • Total labour costs= 117.8% of wage costs These figures were extrapolated to the other 6 countries where zero-hour contracts are used extensively and exclusivity clauses are legal. Low and high estimates of % zero hour workers prevented from

	getting a 2nd job were adopted, taking the UK figure (6%) as a central estimate. On that basis, the following were calculated for the 7 countries (thus accounting for most zero-hour workers in the EU): • number of zero hour contract workers subject to exclusivity clauses; • number of those workers that would like a 2nd job but are prevented • Increase in number of hours worked by zero hour contract workers getting a 2nd job after prohibition of exclusivity • Increase in number of hours that zero-hours workers with 2nd jobs are not available to main employer • Increase in reorganisation costs for main employers due to non-availability of zero-hours worker with a 2nd job • Increase in income for zero hour contract workers getting a 2nd job after prohibition of exclusivity • Increase in tax revenue from zero hour contract workers getting a 2nd job after prohibition of exclusivity • Increase in revenues for secondary employers of zero hour contract workers after prohibition of exclusivity Eurostat provided data on • median hourly earnings (assumed low earners) • lower earner hourly labour costs • lower earner tax rates
Measure **4.3: possibility to request new form of employment**	
Population affected - firms	• Number of firms in countries that have both not yet included casual workers under the Directive and not adopted the options • Differentiate: SMEs + large companies
Population affected – workers	• Number of employees in countries that have not yet adopted this option for all workers
Cost of familiarisation	As for Measures 4.1, 4,2
Cost of providing statements	Zero. This option does not bring additional employees into the scope of the Directive.
Costs of replying to requests	• Assumed that the main costs arise from atypical workers' requests (i.e. number of requests by employees on standard forms are minimal and in any case, many such workers already have a right) • Estimate number of atypical workers brought into the scope of the Directive and not yet having a possibility to

	request • Previous research shows that 53% of fixed-term workers in Europe would prefer a permanent contract.[208] • Therefore, assume that 25% might ask in any one year (i.e. each individual asks once about every two years). • Unit cost of replying = same as cost of written statement • Total cost = number asking x unit cost
Measure **4.4: maximum period of probation**	
Population affected - firms	• Number of firms in countries that have not yet adopted the option • Differentiate: SMEs + large companies
Population affected – workers having new right	• Number of employees in countries that have not yet adopted this option
Population affected – workers benefitting in practice	• In practice, only new starters benefit • Assume labour turnover: 10-20% p.a. • High estimate: 20% of employees in countries that have not yet adopted this option • Low estimate: 10% of employees in countries that have not yet adopted this option
Cost of familiarisation	As for Measures 4.1, 4.2, 4.3.
Cost of providing statements	Zero. This option does not bring additional employees into the scope of the Directive.
Measure **5: Enforcement**	
	Qualitative analysis only. Some costs will mostly only arise to public authorities responsible for enforcement.

The measures were then combined into **4 policy packages or "scenarios"**:

Scenarios
A. Baseline (no change)
B. Extended scope and strengthened requirements (Options 1, 2, 3, 5)
C. Strengthened requirements and minimum rights (Options 2, 3, 4, 5)
D. Extended scope and strengthened requirements and minimum rights (Options 1, 2, 3, 4, 5)

The following assumptions were used to assess combined impacts of the scenarios.

Scenarios	
A	• Baseline • Assumed that Member States make no revisions to current legislation (otherwise, the baseline is unpredictable – Member States may choose to

[208] European Parliament (2016), Precarious Employment in Europe: Patterns, Trends and Policy Strategies

	include/exclude atypical workers, increase/reduce the deadline, etc. using their freedom within the parameters set by the Directive)
B	• Measures 1, 2, 3, 5 • Assume firms only need to familiarise once, therefore total cost of familiarisation is for Measure 2 which affects all firms
C	• Measures 2, 3, 4, 5 • Assume firms only need to familiarise once, therefore total cost of familiarisation is for Measure 2 which affects all firms • Effects of Measures 5.1 to 5.4 are estimated only for casual workers that are already within the scope of the Directive (due to non-application of exclusions by national legislation)
D	• Measures 1, 2, 3, 4, 5 • Assume firms only need to familiarise once, therefore total cost of familiarisation is for Measure 2 which affects all firms

4. Some specific methodological assumptions

4.1. Effects of extended scope on undeclared work

The REFIT study concluded that the Directive supports the fight against undeclared work. An extension of the scope of the Directive to more workers could be expected to facilitate the shift of undeclared work into the formal economy. This may be because employers choose to formalise arrangements that are currently informal or because workers feel empowered to demand a formal contract or because labour inspectorates are better supported in their efforts to detect undeclared work.

Comprehensive data on the extent of undeclared work is, by definition, not routinely collected by the relevant national authorities. However, a recent Eurobarometer survey provides some important indications:

- 4% of adults report that they have undertaken undeclared work in the past year;[209]
- The median income from such work is approximately €300 p.a.[210]

The EU's adult population aged 15-64 years is 333m.[211] This suggests that there are around 13.3m people undertaking undeclared work (4% of the population). The total income from such work is approximately €3 990mper year.

The available data suggest that about 140,900 domestic workers in 12 Member States would be brought into the scope of the Directive, i.e. about 1% of the number of people undertaking undeclared work. Given that other types of undeclared work might also be brought into the formal economy, it seems reasonable to consider that the total shift

[209] Eurofound (2013), Undeclared work in the EU.

[210] Own calculation based on the findings of the Eurobarometer survey. Some 69% of respondents gave a figure. Of those, 20% reported <€100, 9% reported €101-200, 17% reported €201-500, 11% reported €501-1000, and 12% reported >€1,000. Based on those figures the median is approximately €300.

[211] European Commission (2017), Employment and Social Developments in Europe 2017

might be between 1-3% of all undeclared work. If such income is taxed at the EU average tax rate for a single person on 50% of the average national wage (20.66%)[212], then the impact on tax revenues would be as shown in the table below.

Such figures should be treated as no more than an indication which is entirely reliant on the robustness of the Eurobarometer survey data and the reliability of the (untested) assumptions of 1-3% shift of undeclared work into the formal economy.

	Percentage of undeclared work formalised as more workers come under the scope of the Directive		
	1%	**2%**	**3%**
Undeclared work brought into the formal economy p.a.	€39.9m	€79.8m	€119.7m
Marginal tax rate	20.66%	20.66	20.66%
Increase in tax revenues p.a.	€8.2m	€16.5m	€24.7m

It can be assumed that some of the workers brought into the formal economy will also have been receiving social security benefits. It is impossible to know with any uncertainty the extent to which such benefit payments would be reduced once the work is formalised; this would depend on the conditions under which payments are made, i.e. as determined by eligibility rules of national systems, and also whether claims were legitimate or bogus. However, one might assume that the loss of social security payments must be sufficiently small to incentivise the worker to enter the formal economy. On that basis, we could estimate that the reduction in social security payments would be equivalent to no more than 10-20% of the value of undeclared work brought into the formal economy, in consequence of which savings of €4m-€24m might arise.

4.2. Familiarisation with the new legislation

This cost estimates the administrative action of employers familiarising themselves with the new legislation. The cost associated to this action has been calculated for the following policy packages:

- Extended scope and strengthened requirements (measures 1,2,3,5)
- Strengthened requirements and minimum rights (measures 2,3,4,5)
- Extended scope, strengthened requirements and minimum rights (measures 1,2,3,4,5)

It is assumed that familiarisation costs are one-off costs.

The approach used to estimate the quantity and price variables as well as the total cost is presented below.

[212] Eurostat (Tax rate [earn_nt_taxrate]

Quantity .

To estimate the affected population of each scenario the following assumptions are made:

- It is assumed that the cost of familiarisation with the legislation is not cumulative, i.e. the affected company will take the same time if it needs to familiarise itself only with one measure (e.g. measure 2) or with more than one measure (e.g. measures 2 and 3). As a result, the time required is considered a constant variable.
- It is assumed that in each company one person is in charge of learning about and understanding the new legislation and is responsible for transferring this information to others.

The affected populations are calculated for each measure considered under the three policy packages considered. Measure 2 covers the largest population and the population likely to incorporate the affected populations of all the other options. In addition, measure 2 is incorporated in all the policy packages analysed under this study. As a result it was assumed that the number of affected companies under measure 2 represent the number of companies affected for the considered policy packages.

The legal mapping informed the population affected by measure 2. If a Member State did not incorporate all the additional information requirements analysed under this measure, it was assumed that all the companies operating in this Member State would be affected by the policy change. According to the legal mapping the population affected by the policy packages listed above includes all the companies operating in EU-28 Member States exept from Estonia and Greece. The table below provides the number of companies included in the affected population.

Member State	Companies affected by the policy packages B, C and D		
	SMEs	Large companies	Total
AT	321,243	1,082	322,325
BE	601,252	901	602,153
BG	325,550	669	326,219
CZ	999,490	1,558	1,001,048
DE	2,396,998	11,354	2,408,352
DK	210,048	678	210,726
EE	67,952	172	68,124
ES	2,462,621	2,919	2,465,540
FI	228,515	581	229,096
FR	2,904,618	4,196	2,908,814
HR	146,256	381	146,637
HU	535,756	854	536,610
IE	232,726	448	233,174
IT	3,679,965	3,162	3,683,127
LT	186,131	337	186,468
LU	31,780	146	31,926
LV	109,442	200	109,642
MT	26,008	51	26,059
NL	1,090,703	1,540	1,092,243
PL	1,603,368	3,191	1,606,559

PT	806,396	787	807,183
RO	456,480	1,642	458,122
SE	685,459	974	686,433
SI	134,515	212	134,727
SK	428,993	531	429,524
UK	1,934,517	6,430	1,940,947

The second assumption listed above allows to change the unit of analysis: the number of workers reponsible for familiarising with the legislation corresponds to the number of companies affected.

Price

The price variable was estimated using as a reference the data from another impact assessment estimating a similar cost.[213] In this study the price was calculated by size of company as well as the role of the staff and include an additional 25% for overheads. The price provided by ICF was updated to 2016 values using the labour cost index from Eurostat. The total price for a person to familiarise him/herself with the EU legislation is provided in the table below.

Member State	Price to familiarise with the legislation per person (in €)	
	SMEs	Large companies
AT	74.4	53.6
BE	69.2	49.0
BG	7.2	5.5
CY	34.1	26.5
CZ	17.8	12.9
DE	68.3	45.6
DK	76.2	51.0
EE	14.3	9.8
EL	25.7	18.3
ES	44.6	33.7
FI	62.6	43.9
FR	65.0	47.2
HR	26.9	20.7
HU	19.3	14.0
IE	62.6	43.0
IT	73.2	56.3
LT	11.1	8.0
LU	84.1	58.0
LV	12.8	8.0
MT	24.6	16.5
NL	54.4	35.3

[213] ICF (2014) Study measuring the impacts of various possible changes to EU working time rules in the context of the Review of the Directive 2003/88/EC

PL	20.6	15.2
PT	33.0	25.5
RO	22.2	16.3
SE	74.3	52.5
SI	27.8	18.5
SK	11.8	8.7
UK	72.0	50.8

Source: CSES and PPMI calculations based on ICF (2014)

Total cost of familiarisation with the new legislation.

The total cost of familiarisation with the new legislation is calculated by multiplying the affected population by the price estimated in each Member State. A breakdown is provided in the table below.

Member State	Companies affected by the policy packages B, C and D (in €)		
	SMEs	Large companies	Total
AT	23,906,531.7	58,008.1	23,964,539.8
BE	41,634,643.8	44,117.4	41,678,761.1
BG	2,348,917.8	3,680.2	2,352,597.9
CZ	8,879,410.5	10,036.2	8,889,446.7
DE	81,839,409.8	258,943.5	82,098,353.3
DK	15,995,612.9	34,580.7	16,030,193.6
EE	971,842.0	1,692.8	973,534.8
ES	54,880,985.0	49,246.6	54,930,231.7
FI	14,316,380.5	25,482.2	14,341,862.8
FR	94,472,530.8	99,092.4	94,571,623.2
HR	3,934,200.7	7,887.1	3,942,087.8
HU	5,165,463.6	5,958.3	5,171,421.9
IE	14,577,457.8	19,254.0	14,596,711.8
IT	269,223,027.3	178,025.5	269,401,052.8
LT	1,028,774.1	1,340.2	1,030,114.3
LU	1,336,709.8	4,231.6	1,340,941.4
LV	699,280.3	798.0	700,078.3
MT	639,368.5	843.6	640,212.1
NL	29,682,500.6	27,170.9	29,709,671.4
PL	33,014,728.9	48,485.9	33,063,214.8
PT	13,308,693.4	10,031.7	13,318,725.1
RO	10,141,181.7	26,708.8	10,167,890.5
SE	50,929,978.2	51,174.7	50,981,152.9
SI	3,740,167.2	3,912.4	3,744,079.6
SK	5,048,403.0	4,640.8	5,053,043.8
UK	69,645,121.1	163,466.2	69,808,587.4
Total	851,361,321	1,138,810	852,500,131

The total amount is likely an overestimation as mostly companies needing to issue new written statements will need to invest in familiarising with the new legislation.

4.3. Costs of issuing written statements

Cost of issuing written statements in the first year and recurring

This section estimates the cost for employers of complying with the provisions of the Directive. In particular it focuses on the cost of issuing a written statement and transmitting it to the concerned employees.

The approach used to estimate the quantity and price variables as well as the total cost is presented below.

Quantity

Overall, the total number of workers cannot be estimated by simply aggregating the number of workers estimated under each category because of the risk of double-counting. It is very likely that some workers fall under more than one category, e.g. a platform worker can also work less than eight hours a week.

As a result, the total number of workers newly covered by the Directive has been estimated using the following assumptions. These assumptions are partly informed by the evidence collected during the study and partly based on reasonable assumptions:[214]

- All platform workers are assumed to work less than eight hours
- As reported in Eurofound (2017), casual workers and voucher-based workers show clear overlaps. This is likely to be related to the intermittent and on-call nature of the work provided. To calculate the overall affected population of this option, it is assumed that 50% of the voucher-based workers are also included under the category of casual workers.
- Given the nature of their work, domestic workers are likely to fall under the following categories: (i) casual workers, (iii) voucher-based workers and (iii) employees with a contract of duration of less than one month. As a result, it is assumed that all the domestic workers affected by this option are already included these three categories.
- In order to have a conservative approach, the three biggest categories of atypical workers, i.e. employees working less than eight hours, employees with a contract of duration of less than one month and casual workers, are assumed to be mutually exclusive.

Based on these assumptions, the total number of workers newly covered by the Directive is between 2.4m and 3.2m.

[214] More information on can be found in the document explaining how each category was estimated

Cost of issuing a written statement

The cost of issuing a written statement has been extrapolated from the REFIT study. The REFIT study assessed this cost in three steps. The first two steps showed two different methods used to calculate the cost of issuing a written statement, while the third step combined the two assessment methods.

The cost of issuing a written statement was calculated as follows:

- Assessed as *average time per contract*
- Assessed as *annual fixed costs*

The first method was calculated as follows: the respondents of an employer survey were used to estimate the time required by the employer to issue a written statement, which is multiplied by the corresponding annual number of statements. This provides the time spent on complying with the Directive for each type of contract per annum. These time estimates are then multiplied by the hourly wage in the respective Member State using data from Eurostat on national average wages. This cost per company is then divided with the number of employed persons in the company to calculate the cost per employed person. The second method used by the REFIT study reported the average costs of companies considering the cost of complying with the obligation of the Directive as annual fixed cost. This information was collected from a panel survey carried out in eight Member States.

The third step of the REFIT study consisted in merging the two types of estimates into one overall cost assessment to include a larger and less biased share of the survey population.

The table below provides an overview of the average annual cost per contract in EURO estimated with the two methods.

	Method 1 (*average time per contract*)	**Method 2 (*annual fixed costs*)**	**Merged approach**
Micro enterprises	22	198	44
Small enterprises	13	156	57
Medium enterprises	18	127	57
Large enterprises	10	45	25

Source: REFIT

In the current study, SMEs are defined as companies with a number of workers between 1 and 249 and differ from the data reported in the REFIT study. As a result, it was

necessary to weight the data collected in the REFIT study to estimate the average annual cost for SMEs and large companies.[215]

The costs used are provided in EURO in the table below.

	Method 1 (*average time per contract*)	**Method 2 (*annual fixed costs*)**	**Merged approach**
SMEs	18.1	153.5	52
Large enterprises	10	45	25
Weighted average	17.1	128.7	47.9

Total cost for written statements provided to employees newly covered by the Directive

The cost of issuing a written statement is included under option 1, which aims to extend the scope of the Directive. Under this option, employers will have to provide a written statement for each existing worker currently not covered by the Directive and for each new hire. In this study, the first group of workers are considered one-off costs whilst the latter are calculated as recurring costs.

The one-off cost is calculated by multiplying the total number of atypical workers not covered by the Directive with the price estimated for each written statement. Based on the assumptions listed above, the total number of workers that would be newly covered by the Directive is estimated between 2.4m and 3.2m. This is multiplied by the weighted average of the merged approach, i.e. EUR 47.9.

The total cost of extending the scope of the Directive is therefore between EUR 114m and €152m.

Recurring costs will be faced by employers and depend on the number of workers hired every year. The recurring costs have been calculated assuming different percentages of staff turnover per year: the table below provides the annual estimated cost for both scenarios. The costs are estimated in millions of EUR.

	Assuming turnover of 10%	**Assuming turnover of 20%**
Annual costs	between €11.4m and €15.2m	between €22.7m and €30.3m

5. Multi-criteria analysis

We follow an approach to complete the impact assessment through multi-criteria analysis of the possible scenarios, which is consistent with the Better Regulation Guidelines (Tool #63). The results of the multi-criteria analysis are presented in a performance matrix comparing the options against the various criteria. Given the diversity of impacts, we use

[215] The REFIT study reported the size of the population providing information for each size of company. This allowed calculate the weighted average of the responses provided in the REFIT study

a simple form of grading using qualitative values reflecting performance (i.e., +++, ++, +, 0, -, --, ---). The grading requires a balanced assessment of the different impacts, but the underlying analysis should be able to support the judgments made.

The criteria will be the overall economic, social, legal and fundamental rights impacts listed above.

Weights are not used to provide overall scores for different scenarios. Instead, the table simply presents the relative scores of each scenario.

The final analysis uses a matrix comparing five scenarios against the criteria. The tables below present:

- scenarios
- MCA matrix
- legend to explain the score against each criterion

The multicriteria analysis undertaken by the contractors for the study was reviewed and completed in light of Commission's own research, notably into the impacts of the training provision and enforcement.

Scenarios
A. Baseline (no change)
B. Extended scope and strengthened requirements (Options 1, 2, 3, 4)
C. Strengthened requirements and minimum rights (Options 2, 3, 4, 5)
D. Extended scope and strengthened requirements and minimum rights (Options 1, 2, 3, 4, 5)

Criteria for comparing options	A	B	C	D
Labour market impact				
Effect on working conditions				
Effect on public finances				
Competitiveness & productivity				
Ease of application & enforcement				
Fundamental				

rights				

Legend: Labour market impact	
+++	All casual workers have the right to get a second job with another employer (if they wish and if such work is available) AND: negligible displacement of workers covered by the Directive by workers not covered
++	A majority of casual workers have the right to get a second job with another employer (if they wish and if such work is available) AND: negligible displacement of workers covered by the Directive by workers not covered
+	A minority of casual workers have the right to get a second job with another employer (if they wish and if such work is available) AND: negligible displacement of workers covered by the Directive by workers not covered
0	No increase in the proportion of casual workers have the right to get a second job with another employer AND: negligible displacement of workers covered by the Directive by workers not covered
-	A minority of employers of casual workers have the right to include exclusivity clauses in the contracts of casual workers
--	A majority of employers of casual workers have the right to include exclusivity clauses in the contracts of casual workers OR: Non-negligible displacement of workers covered by the Directive by workers not covered
---	All employers of casual workers are entitled to include exclusivity clauses in the contracts of casual workers AND: Non-negligible displacement of workers covered by the Directive by workers not covered

Legend: Effect on working conditions	
+++	Majority of workers not yet covered are brought into the scope of the Directive AND: Majority of casual workers enjoy improved basic rights AND: All workers covered have right to more information
++	EITHER: Majority of workers not yet covered are brought into the scope of the Directive OR: Majority of casual workers enjoy improved basic rights AND: All workers covered have right to more information
+	EITHER: Minority of workers not yet covered are brought into the scope of the Directive OR: Minority of casual workers enjoy improved basic rights AND: All workers covered have right to more information

0	Zero net effect
-	EITHER: A minority of workers currently covered are removed from the scope of the Directive OR: Ability of a minority of workers to enforce rights or right to receive information is weakened
--	EITHER: Majority of workers currently covered are removed from the scope of the Directive OR: Ability of majority of workers to enforce rights or right to receive information is weakened
---	Majority of workers currently covered are removed from the scope of the Directive AND: Ability of majority of workers to enforce rights or right to receive information is weakened

Legend: effect on public finances	
+++	Increase in tax revenues/savings likely to greatly exceed cost of transposition, enforcement, etc.
++	Increase in tax revenues/savings likely to slightly exceed cost of transposition, enforcement, etc.
+	Increases in tax revenues/savings in social security are likely to offset cost of transposition, enforcement, etc.
0	No increase in tax revenues
-	Slight loss of tax revenues
--	Substantial reduction in tax revenues
---	Excessive reduction in tax revenues

Legend: competitiveness and productivity	
+++	Majority of affected employers likely to enjoy increased in staff loyalty/retention or workforce productivity, no adjustment costs and administrative costs are "business-as-usual" AND: Increase in revenues of "second" employers of casual workers exceeds reorganisation costs of "first" employers due to non-availability of such workers
++	Majority of affected employers likely to enjoy increased in staff loyalty/retention or workforce productivity and administrative costs are "business-as-usual" OR: Increase in revenues of "second" employers of casual workers exceeds reorganisation costs of "first" employers due to non-availability of such workers
+	Minority of affected employers likely to enjoy increased in staff loyalty/retention or workforce productivity and administrative costs are "business-as-usual"

	AND: No change in revenues of "second" employers of casual workers and no change in reorganisation costs of "first" employers due to non-availability of such workers
0	Limited effect on staff loyalty/retention or workforce productivity but administrative costs are "business-as-usual" AND: No change in revenues of "second" employers of casual workers and no change in reorganisation costs of "first" employers due to non-availability of such workers
-	Minority of affected employers likely to face reduced staff loyalty/retention or workforce productivity and administrative costs are "business-as-usual" AND: No change in revenues of "second" employers of casual workers and no change in reorganisation costs of "first" employers due to non-availability of such workers
--	Majority of affected employers likely to face reduced staff loyalty/retention or workforce productivity and administrative costs are substantial OR: Increase in reorganisation costs of "first" employers due to non-availability of casual workers exceeds increase in revenues of "second" employers of casual workers increase in revenues of "second" employers of such workers
---	Majority of affected employers likely to face reduced staff loyalty/retention or workforce productivity and adjustment costs and administrative costs are substantial AND: No change in revenues of "second" employers of casual workers and no change in reorganisation costs of "first" employers due to non-availability of such workers

Legend: application and enforcement	
+++	Ability of Member States to enforce workers' rights is considerably strengthened AND: Costs of transposition, enforcement, etc. are not substantial for Member States
++	Ability of Member States to enforce workers' rights is considerably strengthened OR: Costs of transposition, enforcement, etc. are not substantial for Member States
+	Ability of Member States to enforce workers' rights is slightly strengthened
0	No difference in ability of Member States to enforce workers' rights Costs of transposition, enforcement, etc. are not substantial for Member States
-	Ability of Member States to enforce workers' rights is slightly weakened
--	Ability of Member States to enforce workers' rights is considerably weakened OR: Transposition, enforcement, etc. are cumbersome and expensive for Member States
---	Ability of Member States to enforce workers' rights is considerably weakened AND: Transposition, enforcement, etc. are cumbersome and expensive for

	Member States

Legend: fundamental rights	
+++	Revision of the Directive considerably strengthens support for fundamental rights for a majority of workers
++	Revision of the Directive considerably strengthens support for fundamental rights for a minority of workers
+	Revision of the Directive slightly support for fundamental rights for a minority of workers
0	No impact
-	Revision of the Directive slightly weakens current support for fundamental rights
--	Revision of the Directive considerably weakens current support for fundamental rights
---	Revision of the Directive infringes fundamental rights

The following criteria are used for the assessment of Coherence:

Legend: European Pillar of Social Rights	
+++	Revision of the Directive considerably supports numerous Pillar principles
++	Revision of the Directive considerably supports some Pillar principles
+	Revision of the Directive slightly supports some Pillar principles
0	No impact
-	Revision of the Directive goes slightly against some Pillar principles
--	Revision of the Directive goes against numerous Pillar principles
---	Revision of the Directive goes considerably against numerous Pillar principles

Legend: EU social acquis	
+++	Revision of the Directive considerably strengthens complementarity and coherence with most relevant EU social acquis
++	Revision of the Directive considerably strengthens complementarity and coherence with some elements of relevant EU social acquis
+	Revision of the Directive slightly strengthens complementarity and coherence with some elements of relevant EU social acquis
0	No impact
-	Revision of the Directive slightly weakens complementarity and coherence with some elements of EU social acquis

--	Revision of the Directive considerably weakens complementarity and coherence with most EU social acquis
---	Revision of the Directive makes it incoherent with EU social acquis

ANNEX 5: GLOSSARY

Term or acronym	*Meaning or definition*
CJEU	Court of justice of the European Union
ECB	European Central Bank
ESDE	"Employment and Social Developments in Europe"
Eurofound	European Foundation for the Improvement of Living and Working Conditions
EWCS	European Working Conditions Survey
HR	Human Resources
IA	Impact Assessment
ICT	Information and communications technology
ILO	International Labour Organization
LFS	European Union Labour Force Survey
MCA	Multi-criteria analysis
MS	Member States
NGOs	Non-governmental organisations
OECD	Organisation for Economic Co-operation and Development
REFIT	European Commission's Regulatory Fitness and Performance programme
RSB	Regulatory Scrutiny Board
SBS	European Union structural business statistics
SES	European Union Structure of Earnings Survey
SMEs	Small and medium-sized enterprises
SWD	Staff Working Document
TA(W)	Temporary Agency (Workers)
TFEU	Treaty on the Functioning of the European Union
WSD	Written Statement Directive

ANNEX 6: FURTHER INFORMATION ON RELEVANT NEW AND NON-STANDARD FORMS OF WORK

Note on terminology

Across the document, different categories of employment are presented.

Non-standard employment is described by the ILO[216] as employment arrangements which deviate from the 'standard employment relationship' (full time, of indefinite length, part of a subordinate relationship between an employer and an employee). It includes temporary employment (fixed term, casual, seasonal work), part-time and on-call work, multi-party employment relationship (subcontracted labour, temporary agency work) and disguised employment (misclassified self-employment but also dependent self-employment).

Atypical work (Eurofound): employment relationships not conforming to the standard/ 'typical' model (full-time, regular, open-ended employment with a single employer over a long time span).

New forms of employment (Eurofound[217]) include employee sharing, job sharing, interim management, casual work (including intermittent work and on-call work), ICT-based mobile work, voucher-based work, portfolio work, crowd employment, collaborative employment. These forms include elements of non-conventional workplaces, support of ICT, different employment relationship organisation, different work patterns, networking. Eurofound underlines that there is currently no shared understanding of what constitutes 'new forms of employment'.

Precarious work is described by the European Parliament Policy Department A[218] as the intersection of: insecure employment (e.g. fixed term or temporary agency work), unsupportive entitlements (i.e. few entitlements to income support), vulnerable employees (i.e. few other means of subsistence). "Precarious work" does not have a universally-accepted definition in Europe and that it is always relative.

Non-regular employment (OECD publications): work in all forms of employment that do not benefit from the same degree of protection against contract termination as permanent workers.[219]

Some **specific forms of work** are also referred to:

- **Casual work**

According to Eurofound's definition[220], casual work is a type of work where the employment is

[216] *Non-standard employment around the world: Understanding challenges, shaping prospects* International Labour Office – Geneva: ILO. 2016.

[217] Eurofound (2015), *New forms of employment*, Publications Office of the European Union, Luxembourg.

[218] European Parliament, Policy Department A, (2016) *Precarious Employment: Patterns, Trends and Policy Strategies in Europe*.

[219] OECD Employment Outlook 2014, Non-regular employment, job security and labour market divide, p. 141-209.

not stable and continuous, and the employer is not obliged to regularly provide the worker with work, but has the flexibility of calling them in on demand; it is work which is irregular or intermittent with no expectation of continuous employment. Workers' prospects of getting such work depend on fluctuations in the employer's workload.

Eurofound divides casual work into two main categories:
- On-call work (including zero-hours contracts)
- Intermittent work

The first, on-call work, involves a continuous employment relationship maintained between an employer and an employee, with the option for the employer to call the employee in as and when needed. In some countries employers are obliged to indicate a minimum number of hours, while in others they are not obliged to ever call the worker (i.e. zero-hours contracts). The second category of casual work, intermittent work, involves an employer approaching workers on a regular or irregular basis to conduct a specific task, often related to an individual project or seasonal work.

- **Crowd employment/platform work**

'Platform work' is not formally defined at EU level. However, the Commission Communication "A European agenda for the collaborative economy" [221] defines the concept of collaborative economy, the presence of an online platform being a necessary element of the definition. Platform work is carried out by service providers who can be professional or not; they can be self-employed persons or workers.

Eurofound (2015) defines crowd employment as an employment form that uses an online platform to enable organisations or individuals to access an indefinite and unknown group of other organisations or individuals to solve specific problems or to provide specific services or products in exchange for payment.

Crowd workers are very rarely, if ever, employed by the platform. Instead, they predominantly operate on a self-employed basis as independent contractors and outside the scope of employment legislation. Eurofound notes that crowd employment platforms have to follow general legal frameworks such as commercial codes, civil codes, consumer protection acts and data protection legislation, but there are no legal or collectively agreed frameworks specifically addressing crowd employment in Europe. [222]

- **Domestic work**

ILO defines "domestic work" in Article 1 of the Domestic Workers Convention, 2011 (No. 189):
(a) the term "domestic work" means work performed in or for a household or households;
(b) the term "domestic worker" means any person engaged in domestic work within an employment relationship;
(c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

- **Temporary Agency work**

[220] Eurofound (2015), page 46
[221] COM(2016) 356 final
[222] Eurofound (2015), New forms of employment, Publications Office of the European Union, Luxembourg.

'Temporary Agency Work' is a form of work where the worker has a contract of employment or an employment relationship with a temporary-work agency with a view to be assigned to a user undertaking to work temporarily under its supervision and direction. [223]

- **Voucher-based work**

Eurofound defines 'voucher-based work' as 'a form of employment where an employer acquires a voucher from a third party (generally a governmental authority) to be used as payment for a service from a worker, rather than cash'. [224] This type of employment has been introduced in several Member States as a way to better regulate domestic work and improve protection of domestic workers, or tackle the problem of undeclared work in agriculture.

- **Paid traineeship**

According to the EU Quality Framework for Traineeships, 'traineeships' are understood as a limited period of work practice, whether paid or not, which includes a learning and training component, undertaken in order to gain practical and professional experience with a view to improving employability and facilitating transition to regular employment.

- **Bogus self-employed**

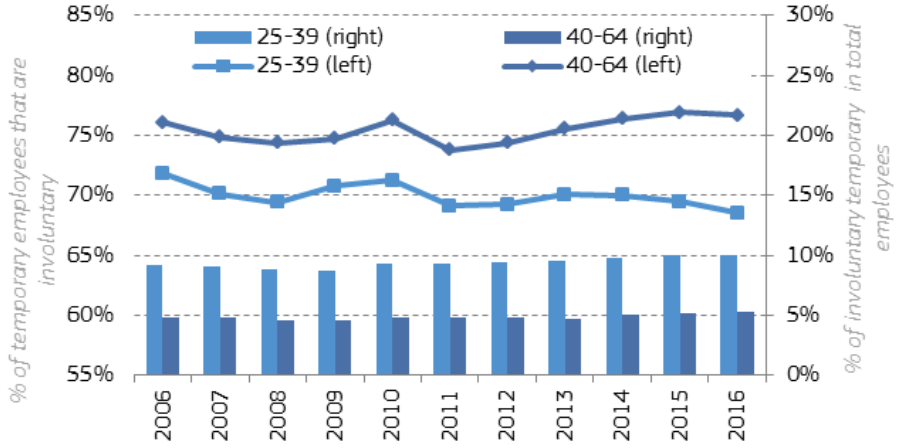
'Bogus' or 'false' self-employment refers to the phenomenon of workers who would usually meet the legal definition of an employee but instead are registered as self-employed . In this case, the subordinate employment relation is disguised as autonomous work, usually for fiscal reasons, or in order to avoid the payment of social security contributions and thereby reduce labour costs, or to circumvent labour legislation and protection, such as the provisions on dismissals . This can be characterised as an employer abuse of contractual relations, and these workers are also, compared to employed workers, at a higher risk of precariousness due to a lack of social security and pension coverage and a lack of access to some employment rights.[225]

[223] Directive 2008/104/EC, Article 3 (1) (c)

[224] Eurofound (2015), New forms of employment, Publications Office of the European Union, Luxembourg, p.82.

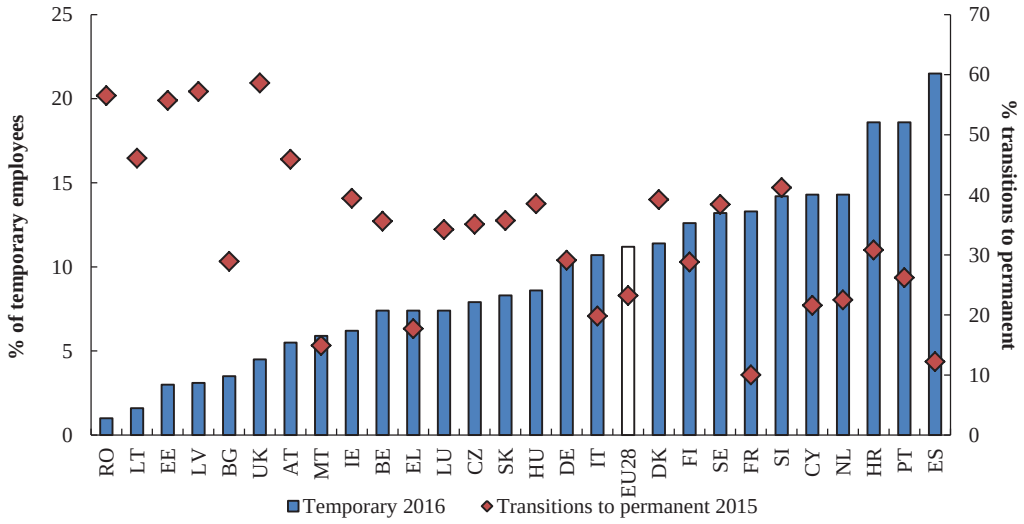
[225] "Precarious employment in Europe, Part 1: Patterns, trends and policy strategy"- study for the EMPL Committee, 2016

Figure 1. Percentage of temporary employees who could not find a permanent job as a share of all employees (permanent and temporary, bars) and of temporary employees only (line), by age, EU-28, 2006-2016



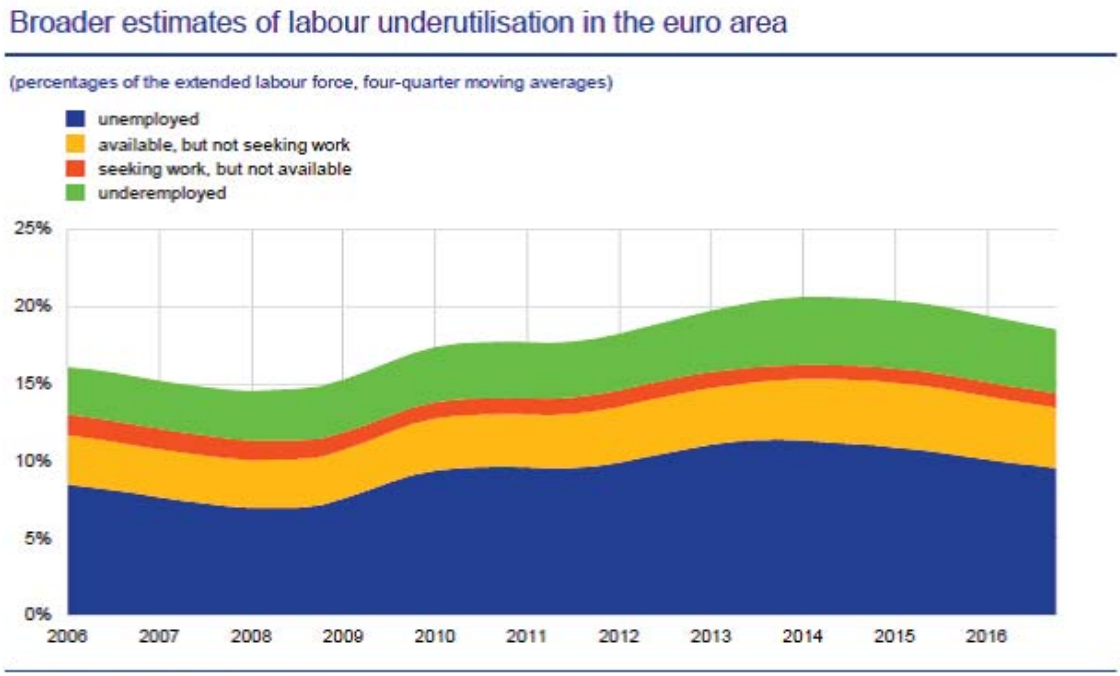
Note: Major break in series in 2005 so not possible to compare with earlier years. 'No answer' category was not included
Source: Own calculations based on EU-LFS.

Figure 2. Share of temporary contracts and transitions from temporary to permanent



Source: Eurostat.

Figure 3. Underemployment in the EU



Sources: Eurostat and ECB calculations.
Notes: All components are expressed as percentages of the extended labour force (i.e. the active labour force plus those available, but not seeking work and those seeking work, but not available). The latest observations are for the fourth quarter of 2016.

Figure 4: Average share of employees receiving training in Europe 2010 and 2015 by type of employment

Source: EWCS 2010, 2015, weighted results, calculation Werner Eichhorst and Verena Tobsch.

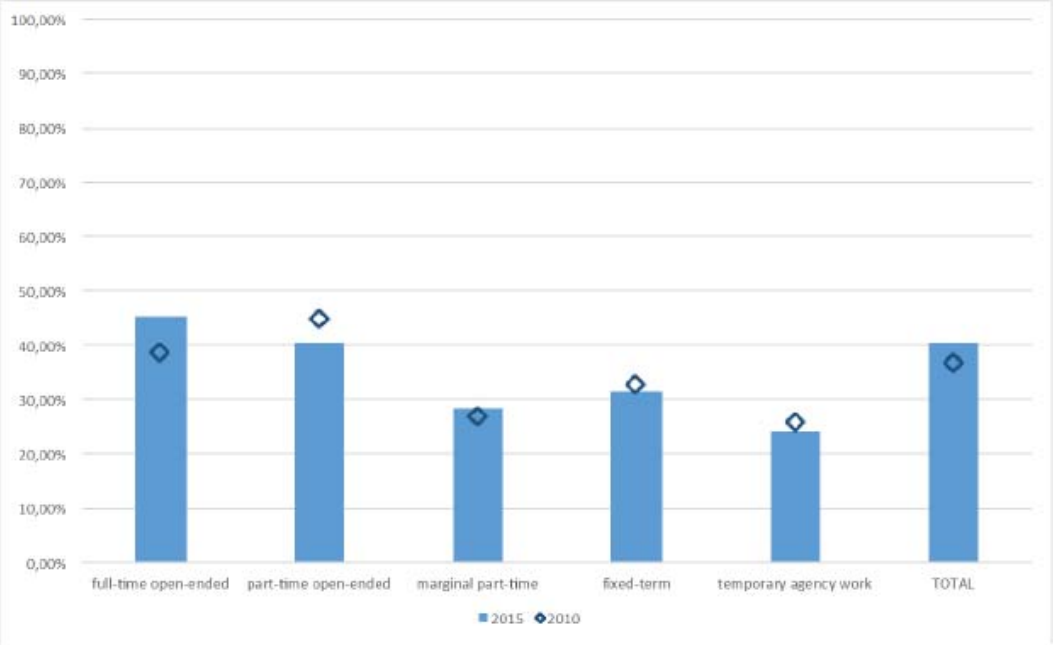


Table.1 Summary analysis of relevant new and non-standard forms of employment.

Type of employment	Numbers	Usual profiles	Sectors	Covered by current WSD?[226]	Job predictability/security	Trends	Other comments
Casual work: on-call, including zero hours	4-6 million[227]	Low-skilled workers, women, young workers	Tourism (esp. hospitality and catering), agriculture, health and social care, education	Partially	Very low (though national policies and HR practices vary) According to Eurofound: low levels of job and income security, poor social protection, little access to HR measures and, in many cases, dull or repetitive work. The high degree of flexibility is valued by some workers, who benefit from an improved work–life balance, but is reported as excessive for the majority of the casual workers, who would prefer more	Diverse trends: On-call work has emerged or grew in importance over the last decade in IE, IT, NL, SE and the UK. [228] Intermittent work decreased e.g. in BE and SK, while it increased in HU and RO[229]	On-call work is illegal in AT, HU, LV, LT and SL. It does not exist in law or practice in EE, DE, LU, MT and PT. Zero-hours work is illegal in AT and LV. It does not exist in law or practice in EE, LU, MT, PT.
Casual work: intermittent			Agriculture, tourism, audio-visual sector	Partially			It does not exist in law or practice in in LU and MT.

[226] See Table 1 in section 2.2.1 for a list of MS extending or not the coverage of the WSD to specific groups of workers.

[227] Based on the external study "Study to support Impact Assessment on the Review of the Written Statement Directive" by CSES and PPMI. – national research in 28 MS. Data very difficult to collect and compare.

[228] Eurofound (2015), New forms of employment, Publications Office of the European Union, Luxembourg, p.46

[229] Ibid, p. 49-52

Type of employment	Numbers	Usual profiles	Sectors	Covered by current WSD?[226]	Job predictability/security	Trends	Other comments
			('inter-mittent du spectacle' in FR)		continuity.		
Involuntary part-time	27.7% of all part-time workers (2016) [230] Around 7 million in the euro area alone in 2016.[231]	Women, younger workers, less educated workers and – especially – workers new to their current job (tenure < 1 year), those on temporary contracts and in low-paid professions[232]		Yes	Medium Part-time Work Directive 97/81/EC applies, which is a specific tool to ensure that part-time workers should generally not be treated in a less favourable manner than comparable permanent and/or full-time staff concerning employment conditions unless there are objective reasons for different treatment. However, working fewer	Has increased from 22.4% in 2007. [233]	Significant differences across MS: share of involuntary part-time in all part-time employment is below 10% in BE, MT, NL and ET – while over 60% in ES, IT, CY and EL.[234]

[230] EU LSF

[231] Eurostat and ECB calculations/

[232] Eurofound (2017), *Aspects of non-standard employment in Europe*, Eurofound, Dublin

[233] EU LSF

[234] "Precarious employment in Europe, Part 1: Patterns, trends and policy strategy"- study for the EMPL Committee, 2016, p.75-78

Type of employment	Numbers	Usual profiles	Sectors	Covered by current WSD?[226]	Job predictability/security	Trends	Other comments
					hours than necessary results in inadequate income and consequently may lead to precariousness.		
Work between 1-8 hours per week	According to EU-LFS: 3.8 million (2.1% of working age population in the EU – 2016)[235] External study estimate: almost 4 million	Women (though also increasingly men), young workers and workers above 64 years. [236]	Domestic work, cleaning, accommo-dation, hospitality, hotel and catering, care, security and construction.	Partially	Low They may also be excluded from protections offered by the Part-time Work Directive 97/81/EC, to the extent that their employment relationship is qualified as on a casual basis.	Has increased from 3.4 million in 2005[237]	Workers working 1-8 hours per week may be voluntary or involuntary – in the latter case they are a subcategory of the "involuntary part-time" category above.
Work on contracts of less than	4.8% of all temporary contracts in			Partially	Medium To some extent, such	Has increased from 1.8% (0.37 million)	

[235] calculations based on EU-LFS

[236] Eurofound (2017), *Aspects of non-standard employment in Europe*, Eurofound, Dublin

[237] calculations based on EU-LFS

Type of employment	Numbers	Usual profiles	Sectors	Covered by current WSD?[226]	Job predictability/security	Trends	Other comments
1 month	2016 (1.275 million)[238] Estimates in the external study: 1.6 million.				workers may be protected through the Fixed-Term Work Directive 1999/70/EC and other relevant labour law directives.	in 2002[239]	
Crowd work/ platform work	0.5-2% of the workforce according to different studies.[240] 1.1-2.2 million according to the estimations in the external	Younger and better educated than average; often a marginal or complimentary activity	High as well as low-skilled sectors	Mainly out of scope (mainly operating as self-employed)	Low Earnings are often allowed to fall below the applicable minimum wage. Moreover, there is generally no provision for paid leave or breaks, and workers bear all the costs of social security payments, or risk not being covered by social security in the event of disability, job loss or	An exponential increase in the last 5 years.	

[238] calculations based on EU-LFS

[239] calculations based on EU-LFS

[240] *Inter alia* "The Future of Work in the 'Sharing Economy", Codagnone et al, JRC (2016) and Eurofound (2017), Aspects of non-standard employment in Europe, Eurofound, Dublin

Type of employment	Numbers	Usual profiles	Sectors	Covered by current WSD?[226]	Job predictability/security	Trends	Other comments
	study.				retirement.		
Domestic workers	Around 3 million[241]	Predominantly women (89%) – often migrant women, for whom domestic work is a main entry point into the labour market	Household work, care, gardening, security	Yes - if employed under a contract or employment relationship defined by national law. However, majority operate under informal agreement –	Very low – especially if lack of employment contract Low wages. Lack of protection against illness, occupational accidents and workplace hazards, lack of access to social security benefits, such as maternity protection and pension schemes. Furthermore, domestic work is characterised by an unspecified length of employment and uncertainty about future employment. Those characteristics are exacerbated in case of undeclared work.[242]	Likely to grow because of ageing populations and increasing labour participation of women.	High diversity across the EU: in some MS (ES, FR, IT) very significant numbers, in others (Nordic, Eastern) very uncommon. According to the European Federation for Services to Individuals (EFSI), in 2010, the share of informal work in the market for personal services was 70% in IT and ES; 50% in the UK; 45% in DE; 40% in the NL;

[241] Research in the context of the external study "Study to support Impact Assessment on the Review of the Written Statement Directive" by CSES and PPMI.

[242] *Invisible jobs. The situation of domestic workers*, European Parliament briefing, December 2015

Type of employment	Numbers	Usual profiles	Sectors	Covered by current WSD?[226]	Job predictability/security	Trends	Other comments
				often undeclared.			30% in FR and BE; and 15% in SE. [243]
Temporary Agency (TA) Workers	1.7% of EU workforce [244]	Young people (15–24) had a TA employment rate (2.9%) more than double that of workers aged 25–54 (1.3%). The incidence of TA work among the low-skilled (1.8 %) is also more than double that of the high-skilled (0.8 %).[245]	Mainly low-skilled (manual) and medium skilled professions (clerical).	Yes, in an overwhelming majority of MS	Medium TA workers are covered by a specific directive 2008/104/EC aiming at ensuring equal pay and conditions with other employees. However, overall, a negative perception of job security among TA workers. Diverse situation across MS: in at least 8 MS open-ended contracts between the agency and the worker were the dominant contractual	Has increased from 1.2% in 1999 to 1.7% of workforce in 2016 – growing trend in some MS	

[243] *Invisible jobs. The situation of domestic workers*, European Parliament briefing, December 2015

[244] Eurostat, [lfsa_qoe_4a6r2] - 2016

[245] EU-LFS data - Eurobase lfsa_qoe_4a6r2 - 2012

Type of employment	Numbers	Usual profiles	Sectors	Covered by current WSD?[226]	Job predictability/security	Trends	Other comments
					form, in others it was fixed-term contracts. [246]		
Voucher-based workers	Some 2 million[247]	Similar to domestic workers	Household services, care, agriculture	Partly	Medium Voucher-based work entails some job insecurity, social and professional isolation, and limited access to HR measures and career development, but offers workers the opportunity to work legally, better social protection and perhaps better pay.[248]	While the volume of domestic work is likely to grow, the numbers of voucher-based workers will depend on the legislative developments in MS.	There is a significant number of MS where voucher-based work is not specifically recognized by legislation/not widely used (CY, CZ, DE, DK, EE, ES, HU, IE, LU, LV, MT, PL, PT, RO, SE, SK, UK)
Paid trainees	46% of young people (18-35 years old) had	Young people (18-35 years old)	All sectors	Partially In some MS they are	Medium. Various studies and surveys[250] confirmed concerns about the quality	Member States are increasingly promoting internships as	

[246] OECD Employment Outlook 2014, *Non-regular employment, job security and labour market divide*

[247] External study "Study to support Impact Assessment on the Review of the Written Statement Directive" by CSES and PPMI.

[248] Eurofound (2015), New forms of employment, Publications Office of the European Union, Luxembourg, p.82.

[250] Interns Revealed, European Youth Forum, 2011; Eurobarometer on traineeships, 2013.

Type of employment	Numbers	Usual profiles	Sectors	Covered by current WSD?[226]	Job predictability/security	Trends	Other comments
	done a traineeship - 4 out 10 received some financial compensation during their most recent traineeship.[249]			recognized as employees, therefore are in the scope of the Directive. In others they fall outside of the scope (though in some cases might have the right to information	of traineeships, particularly with regard to insufficient learning content and substandard working conditions. The Eurobarometer survey on traineeships in 2013[251] showed that 1 in 5 trainees felt that their working conditions were not on a par with regular employees in terms of equipment, working hours, workload and treatment.	an effective tool in tackling rising youth unemployment and ensuring their school-to-work transition. Likewise, employers increasingly see traineeship not only as a prerequisite for labour market entry, but also as a cheap or even free labour that can substitute regular staff.[252]	

[249] Eurobarometer 378: http://ec.europa.eu/public_opinion/flash/fl_378_en.pdf

[251] Eurobarometer 378: http://ec.europa.eu/public_opinion/flash/fl_378_en.pdf

[252] European Commission (2012). Study on a comprehensive overview on traineeship arrangements in Member States. Final Synthesis Report.

Type of employment	Numbers	Usual profiles	Sectors	Covered by current WSD?[226]	Job predictability/security	Trends	Other comments
				similar to WSD provision).			
Contracts or employment relationships of specific nature			Agriculture, seafarers, family jobs, temporary student jobs	Partially	Unknown. Very diverse groups of workers across the 14 MS which use the exclusion from the WSD on the basis of "Contracts or employment relationships of specific nature"		
Bogus self-employed	In 2015 dependent self-employment amounted to 0.5% of all employment in the EU-28.[253] No			Self-employed are outside of scope of the Directive. Workers	Bogus self-employment can be characterized as an employer abuse of contractual relations, and these workers are also, compared to employed workers, at a higher risk of precariousness due to a lack of social security and pension coverage and a	Between 2010 and 2015 the overall share of self-employed in total employment has remained rather stable, except in	

[253] European Working Conditions Survey for EU-28. Dependent self-employed defined as : workers who are (1) self-employed without employees, (2) have just one client and (3) obtain more than 75% of their income from that client

Type of employment	Numbers	Usual profiles	Sectors	Covered by current WSD?[226]	Job predictability/security	Trends	Other comments
	data available as to the proportion of those who could be categorized as bogus self-employed.			wrongly classified as self-employed should however fall under the scope.	lack of access to some employment rights. [254]	Greece which recorded a substantial increase. The number and share of self-employed without employees have been growing in a number of Member States.	

[254] "Precarious employment in Europe, Part 1: Patterns, trends and policy strategy"- study for the EMPL Committee, 2016

Tables 2-7: Estimated numbers of some relevant categories of non-standard workers

Table 2. Estimated number of casual workers

Country	Estimated number of casual workers (in thousands)	
	Lower range	Upper range
Austria	345.0	345.0
Belgium	6.5	6.5
Bulgaria	62.3	75.0
Czech Republic	30.1	130.4
Germany	324.0	324.0
Denmark	49.7	59.8
Estonia	13.8	13.8
Greece	94.0	113.0
Spain	400.0	400.0
Finland	83.0	83.0
France	106.0	106.0
Croatia	1.5	1.5
Hungary	119.6	119.6
Ireland	500.0	500.0
Italy	120	120
Netherlands	378	777.0
Portugal	90.1	108.4
Romania	516.0	516.0
Sweden	134.1	134.1
Slovenia	36.1	36.1
Slovakia	416.0	416.0
United Kingdom	516.0	1422.0
Total	4,341.9	5,807

Source:Own CSES PPMI calculations

Table 3 Estimated number of employees working less than eight hours

Country	Estimated number of employees working less than eight hours (in thousands)		
	Micro companies & SMEs (<250 employees)	Large companies (>=250 employees)	Total
AT	82.82	65.03	147.85
BE	29.78	32.49	62.27
BG	7.78	2.67	17.73
CY	6.20	3.70	9.91
CZ	34.06	7.95	42.01
DE	453.47	233.26	686.72
DK	44.56	72.23	116.79
EE	6.31	3.36	9.66
EL	27.83	30.69	58.53
ES	113.02	149.25	262.26
FI	47.97	31.92	79.89
FR	436.76	97.06	533.81
HR	22.58	7.36	29.93
HU	40.54	33.87	74.41
IE	54.04	14.54	68.58
IT	312.39	91.25	403.63
LT	25.12	5.27	30.39
LU	0.83	0.81	1.64
LV	4.42	4.65	9.07
MT	2.63	4.30	6.93
NL	211.05	69.43	280.48
PL	215.78	83.66	299.45
PT	32.83	8.97	41.80
RO	38.95	20.18	59.12
SE	61.43	50.35	111.78
SI	12.20	7.11	19.31
SK	6.70	10.22	16.92
UK	155.15	265.19	420.34

Source: Own CSES PPMI calculations

Table 4 Estimated number of employees working less than one month

Country	Estimated number of employees working less than one month (in thousands)		
	Micro companies & SMEs (<250 employees)	Large companies (>=250 employees)	Total
AT	14.0	11.0	25.1
BE	43.9	47.9	91.8
BG	7.7	1.37	9.1
CY	1.3	0.8	2.1
CZ	1.1	0.25	1.3
DE	164.5	84.6	249.1
DK	4.8	7.7	12.5
EE	1.1	0.6	1.7
EL	3.4	3.7	7.1
ES	82.3	108.6	190.9
FI	13.4	8.9	22.3
FR	434.7	96.6	531.3
HR	10.8	3.51	14.3
HU	11.0	9.15	20.1
IE	1.9	0.51	2.4
IT	61.1	17.86	79
LT	6.6	1.38	8.0
LU	0.9	0.89	1.8
LV	2.5	2.65	5.2
MT	0.4	0.70	1.1
NL	4.8	1.58	6.4
PL	53.0	20.56	73.6
PT	45.1	12.32	57.4
RO	27.9	14.47	42.4
SE	53.0	43.43	96.4
SI	1.8	1.07	2.9
SK	6.7	10.21	16.9
UK	11.6	19.81	31.4
Total	1071.3	532.2	1603.5

Source: Own CSES PPMI calculations

Table 5 Estimated number of domestic workers

Country	ILO study	National research	Estimated population
	Share of domestic workers in total employment	Percentage of employees	No. of workers (in thousands)
AT	0.2%	5% of employees*	132.8
BE	0.9%		40.9
BG	0.2%	1% of workers*	16.0
CY	4.4%	5% of workers*	15.5
CZ	0.1%	1% of employees*	23.4
DE	0.5%	1% of employees	282.0
DK	0.1%		2.7
EE			5.0
EL	2%	3% of employees*	72.2
ES	4%	4% of employees	666.9
FI	0.3%		7.1
FR	2.3%	2% of employees*	534.4
HR	0.1%		1.8
HU	<0.1%		8.7
IE	0.5%		9.8
IT	1.8%	5% of employees*	629.8
LT	0.1%		1.3
LU	1.4%		3.6
LV	0.4%	9% of employees*	35.6
MT	0.1%		0.2
NL	0.1%		8.2
PL	0.1%		15.9
PT	3.4%	2% of employees*	44.8
RO	0.3%		24.4
SE			39.0
SI	0.1%		0.9
SK	0.2%	9% of employees[255]	96.7
UK	0.6%		182.5

[255] Based on reporting by households employing domestic workers, thus heavily under-reported

Total			2902.4

Source: Own CSES PPMI calculations

Table 6 Estimated number of platform workers

Country	Estimated number of platform workers (in thousands)	
	Lower bound	Upper bound
AT	20.71	41.43
BE	22.70	45.41
BG	14.77	29.54
CY	1.77	3.54
CZ	25.08	50.16
DE	200.83	401.65
DK	13.74	27.48
EE	3.06	6.12
EL	18.05	36.10
ES	90.91	181.83
FI	11.90	23.80
FR	131.22	262.43
HR	7.83	15.67
HU	21.55	43.09
IE	9.77	19.53
IT	111.21	222.41
LT	6.59	13.18
LU	1.30	2.59
LV	4.31	8.62
MT	0.94	1.89
NL	41.12	82.23
PL	79.51	159.02
PT	21.86	43.71
RO	40.83	81.66
SE	23.68	47.36
SI	4.51	9.03
SK	12.36	24.72
UK	152.12	304.24

Source: Own CSES PPMI calculations

Table 7 Estimated number of voucher-based workers

Country	Estimated number of voucher-based workers (in thousands)		
	Micro companies & SMEs (<250 employees)	Large companies (>=250)	Total
AT	4.0	3.1	7.1
BE	62.3	68.0	130.3
EL	33.3	36.7	70.0
FR	1080.0	240.0	1320.0
HR	380.6	124.0	504.6
LT	12.4	2.6	15.0
NL	75.2	24.8	100.0
SI	3.8	2.2	6.0
Total	1651.6	501.5	2153.1

Source: Own CSES PPMI calculations

ANNEX 7: SUMMARY OF EU SOCIAL ACQUIS

The protection of workers at the EU level is currently ensured through secondary legislation, mostly in the form of Directives on the basis of what are now Articles 153 and 157 TFEU on social policy,[256] including a set of individual and collective rights. Many of these give a more concrete expression or implementation of social rights as derived from the Treaties and in the Charter of Fundamental Rights of the EU.

Several Directives aim to implement the **principle of equal treatment between persons** in the workplace. The Employment Equality Directive[257] prohibits discrimination in employment **on the basis of sexual orientation, religious belief, age and disability**, and the Racial Equality Directive[258] prohibit discrimination on the basis of **race and ethnicity** in employment, in education, and in access to social security and goods and services. In 2006, the Gender Recast Directive consolidated into a single Directive earlier EU legislation relating to equal opportunities and **equal treatment for men and women** in employment and occupation.[259]

The Pregnant Workers (**Maternity Leave**) Directive provides for paid maternity leave, at least at the level of sick pay for fourteen weeks.[260] In addition, the Directive on self-employed workers and assisting spouses also grants a maternity allowance that is sufficient to enable an interruption of occupational activities for at least fourteen weeks for female self-employer workers or female spouses of self-employed workers.[261] The **Parental Leave Directive**[262] entitles men and women workers to a minimum of four months' leave after the birth or adoption of a child. The **proposal from the Commission for a Directive on work-life balance for parents and carers currently in the legislative procedure[263] would replace Council Directive 2010/18/EU, preserving existing rights but also introducing new rights to** paternity leave, leave to take care of ill or dependant relatives, and to request flexible working arrangements.

Three separate EU labour law Directives, concerning **fixed-term work, part-time work and temporary agency work** aim to ensure equal treatment and **prevent abuse of**

[256] For a detailed overview, refer to the Commission Staff Working Document The EU Social Acquis, accompanying the Communication Launching a consultation on an European Pillar of Social Rights, SWD(2016) 51 final.
[257] Directive 2000/78
[258] Directive 2000/43
[259] The Recast Directive 2006/54/EC
[260] Directive 92/85/EEC
[261] Directive 2010/41/EU
[262] Directive 2010/18/EU implementing the revised Framework Agreement on parental leave
[263] Proposal for a Directive on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, COM(2017) 253 final

'atypical' contracts.[264] Where a worker is employed under such an atypical contract, he or she should generally not be treated in a less favorable manner than comparable permanent and/or fulltime staff concerning employment conditions unless there are objective reasons for different treatment. Under the Temporary Agency Work Directive for instance, from the first day of their assignment, temporary agency workers have to be subject to the same basic working and employment conditions as if they were recruited directly by the user firm to occupy the same job. The Fixed-Term Work Directive also includes an 'anti-abuse' clause to impede unjustified successions of such contracts. An additional Directive extends the EU rules on occupational health and safety to temporary workers, generally more exposed to the risk of accidents at work and occupational diseases.[265] **These protections do not however always apply to the other newer forms of atypical employment discussed in Section 2.2.1 above, notably casual, marginal part-time or platform work.**

The **Working Time Directive**[266] provides a limit to weekly working time, which must not exceed 48 hours on average, including overtime. It also prescribes a minimum daily rest period of 11 consecutive hours, a rest break during working hours, and a minimum weekly rest period of 24 uninterrupted hours. The Directive also lays down the right to minimum paid annual leave of 4 weeks. The Working Time Directive allows flexibility to accommodate differences between national rules or the requirements of specific activities. In addition to the Working Time Directive, specific directives apply to a number of transport sectors.[267] An interpretative communication providing legal guidance on the application of the Directive has been adopted as part of the European Pillar of Social Rights deliverables.[268]

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[264] Fixed-Term Work Directive 1999/70/EC; Part-time Work Directive 97/81/EC; Temporary Agency Work Directive 2008/104/EC

[265] Directive 91/383/EEC

[266] Directive 2003/88/EC

[267] Minimum standards for working time in the civil aviation sector are laid down in Directive 2000/79/EC. Directive 2005/47/EC implements the Social Partners agreement on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector. Directive 2002/15/EC in turn sets the framework for the organisation of working time for mobile workers in road transport activities and self-employed drivers. Regulation (EC) No 561/2006 provides for minimum requirements on the daily and weekly driving times, minimum breaks and daily and weekly rest periods for drivers engaged in the carriage of goods and passengers by road. These provisions reinforce the existing rules on the organisation of the working time and are strictly monitored by means of recording equipment. The working time of seafarers is regulated by Directive 1999/63/EC. Also to be mentioned is Council Directive 2014/112/EU of 19 December 2014 implementing the European Agreement concerning certain aspects of the organisation of working time in inland waterway transport, concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF).

[268] Interpretative Communication on Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time, C/2017/2601

EU rules in the social policy area guarantee workers' right to **occupational health and safety** (OSH)**.** A Framework Directive and 23 individual directives provide rules on the prevention of occupational risks, the protection of safety and health, the elimination of risk and accident factors.[269] The Framework Directive establishes general principles for managing safety and health, such as responsibility of the employer, rights/duties of workers, using risk assessments to continuously improve company processes, and workplace health and safety representation. All individual directives follow these common principles, tailoring the principles of the Framework Directive to specific tasks, specific hazards at work, specific workplaces and sectors, and specific groups of workers. The individual Directives define how to assess these risks and, in some instances, set limit exposure values for certain substances or agents.

To ensure fair and just working conditions also in the context of the temporary provision of services across borders, the Posting of Workers Directive[270] provides that a host State is required to apply to workers posted to its territory certain basic standards of its own labour law system (e.g. minimum wage, working time, holidays) as laid down in national legislation or universally applicable collective agreement. The Enforcement Directive allows host States more effective methods of enforcing labour standards in these situations.[271] On 8 March 2016, the European Commission proposed a revision of the rules on posting of workers within the EU to ensure they remain fit for purpose.[272] Moreover, the Commission adopted a proposal for a directive amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector.[273]

Free movement is also supported via the Regulation on **free movement of workers** (Regulation 492/2011) and the Directive on free movement of workers (Directive 2014/54/EU). The coordination of Social security systems is regulated by Regulation

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[269] Framework Directive 89/391/EEC and Directive 89/654/EEC on minimum safety and health requirements for the workplace; 92/57/EEC on temporary or mobile construction sites; 92/91/EEC on the mineral-extracting industries through drilling; 92/104/EEC on workers in surface and underground mineral extracting industries; 93/103/EC on fishing vessels; 92/29/EEC on improved medical treatment on board vessels; 89/656/EEC on personal protective equipment; 90/269/EEC on the manual handling of loads; 90/270/EEC on work with display screen equipment; 92/58EEC on safety and/or health signs at work; 2009/104/EC on work equipment; 92/85/EEC on pregnant workers; 2013/35/EU on electromagnetic fields; 1999/92/EC on explosive atmospheres; 2002/44/EC on mechanical vibration; 2003/10/EC on noise; 2006/25/EC on artificial optical radiation; 2000/54/EC on biological agents at work; 2010/32/EU on sharp injuries in the hospital and healthcare sector; 98/24/EC on chemical agents; 2004/37/EC on carcinogens or mutagens; 2009/148/EC on asbestos.

[38] Directive 96/71/EC

[39] Directive 2014/67/EU

[272] Proposal for a Directive amending Directive 96/71/EC of The European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, COM(2016) 128 final

[273] COM/2017/0278 final - 2017/0121 (COD)

883/2004 and by Regulation 987/2009 on its implementation, to protect the social security rights of workers moving within the EU.

A Directive on seasonal work sets important labour standards for third country nationals engaging in seasonal work in the EU.[274] The Directive provides the principle of equal treatment between third country nationals and Union nationals, particularly as regards the freedom of association and the right to strike, concerning terms of employment, working conditions and social security benefits. The Single Permit Directive establishes a single application procedure for a single permit to work in the EU and a common set of rights for third country workers legally residing in a Member State.[275] A common set of rights for intra-corporate transferees when working in the EU, facilitating their entry and mobility between Member States is provided by Directive on the conditions of entry and residence of third country nationals in the framework of intra-corporate transfers.[276]

Article 153 TFEU provides for the possibility for the EU to support Member States in ensuring the protection of workers where their employment contract is terminated, notably through the adoption by unanimity voting of Directives laying down minimum standards**.** There is no secondary EU law to implement this right. Similarly, there are no EU rules regarding the length of probation periods.

Three different Directives are concerned with the potential termination of the employment contract in the event of **structural changes in companies**. They embody the basic right to protection against unjustified dismissal, but only in 'collective' circumstances. The Insolvency Directive ensures payment of employees' outstanding claims in the event of the employer's insolvency.[277] The Collective Redundancies Directive regulates the situation of workers affected by decisions of employers to lay off a group of employees.[278] The Transfer of Undertakings Directive[279] protects employees' rights in the event that an undertaking, business, or part of an undertaking or business is transferred from one employer to another, stipulating *inter alia* that such a transfer does not in itself constitute valid grounds for dismissal. The Directives on transfer of undertakings and collective redundancies provide for information and consultation rights. The already mentioned Maternity Leave Directive[280] prohibits women's dismissal from work because of maternity for the period from the beginning of their pregnancy to the end of the period of maternity leave, save exceptional circumstances, for which the

[274] Directive 2014/36
[275] Directive 2011/98/EU
[276] Directive 2014/66/EU
[277] Directive 2008/94/EC
[278] Directive 98/59/EC
[279] Directive 2001/23/EC
[280] Directive 92/85/EEC

employer needs to give justification in writing. The Recast Directive[281] furthermore sets out that workers taking paternity or adoption leave should be protected against dismissal due to exercising those rights.

The Directive establishing a framework for equal treatment in employment[282] protects workers against dismissal where there is discrimination on a prohibited ground, including victimisation.[283]

The **promotion of social dialogue is enshrined as a common objective of the EU and the Member States** in Articles 151 and 152 TFEU. The rights of association, collective bargaining, to strike or to impose lock-outs are excluded from the application of this article. The role of the social partners is recognised at EU level, taking into account the diversity of national systems and their autonomy (Art 152 TFEU). Eight social partner agreements have been implemented pursuant to Article 155(2) TFEU.[284]

The general Information and Consultation Directive[285] establishes a framework for informing and consulting employees at enterprise level. Information and consultation are required on the development of the undertaking's activities, economic situation and employment, and particularly anticipatory measures where there is a threat of restructuring, and likely changes in work organisation or in contractual relations.

The European Works Council Directive[286] provides for the creation of a Works Council (a body representing the employees of a transnational company, to inform and consult them on the progress of the business and any decisions significant for their working conditions) at the request of 100 employees of at least two undertakings or establishments in at least two Member States, or on the initiative of the employer. The involvement of employees, including at board level, is also provided by company law Directives.[287] Finally, the Cross-Border Mergers Directive[288] provides for detailed rules of employee participation in the event of mergers of limited liability companies.

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[281] Directive 2006/54/EC

[282] Directive 2000/78/EC

[283] Other EU anti-discrimination Directives (such as Directive 2006/54/EC or Directive 2000/43/EC) also provide specific protection against unfair dismissal.

[284] Articles 153 and 154 TFEU. Examples of such cross-industry agreements are: Parental leave (revised) (2009), Fixed-term contracts (1999); Part-time work (1997); Parental leave (1996). Autonomous Framework agreements implemented by social partners: Inclusive labour markets (2010); Harassment and violence at work (2007); Work-related stress (2004); Telework (2002).

[285] Directive 2002/14/EC

[286] Directive 2009/38/EC

[287] Firstly, Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees provides that the establishment of a European company will not mean the disappearance or watering down of existing employee involvement arrangements, calling for agreement between the employer and the representatives of employees and providing subsidiary rules applicable in the absence of agreement. Secondly, Directive 2003/72/EC on the information, consultation and

The Young People at Work Directive[289] requires Member States to take the necessary measures to prohibit work by children, particularly that the minimum working age is not lower than the minimum age at which compulsory full-time schooling ends, or 15 years in any event. Exceptions can be adopted by Member States for occasional work or short-term work, involving domestic service in a private household or work regarded as not being harmful, damaging or dangerous to young people in a family undertaking, for cultural, artistic, sporting or advertising activities, subject to prior authorisation by the competent authority in each specific case, for children of at least 14 years of age working under a combined work/training scheme, and for children of at least 14 years of age performing light work. The Directive provides specific limits to maximum weekly working time, night work and minimum rest periods for children and adolescents when they engage in employment.[290]

Finally, the worker is entitled to receive essential information relating to the employment relationship in writing, not later than two months after the commencement of employment on the basis of the **Written Statement Directive**.[291]

participation rights of employees in a European Cooperative Society provides that information, consultation and in some cases, participation procedures at transnational level are to be used whenever a European Cooperative is created.

[288] Directive 2005/56/EC

[289] Directive 94/33/EC

[290] See also Commission Recommendation of 31 January 1967 to the Member States on the protection of young workers and the Commission Recommendation of 15 September 2000 on the ratification of International Labour Organisation (ILO) Convention No 182 of 17 June 1999 concerning the prohibition and immediate action for the elimination of the worst forms of child labour.

[291] Directive 91/533/EEC

ANNEX 8: FURTHER INFORMATION ON CONSIDERED POLICY MEASURES

1. A scope of application encompassing all EU workers, in particular the most precarious

The scope of application of the Written Statement Directive as it stands today is set out in its first Article:

> *"1. This Directive shall apply to every paid employee having a contract or employment relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State.*
>
> *2. Member States may provide that this Directive shall not apply to employees having a contract or employment relationship:*
> *(a) with a total duration not exceeding one month, and/or with a working week not exceeding eight hours; or*
> *(b) of a casual and/or specific nature provided, in these cases, that its non-application is justified by objective considerations.*"

The proposed measure aims to extend the scope of the Directive by removing the exclusions and reiterating criteria for establishing who is a worker for the purpose of the Directive:

Removing the possibilities under the existing Directive to exclude:

1.1: people working less than 8h/week

1.2: people whose employment relationship will last less than 1 month

1.3: people having a contract or employment relationship of a casual or specific nature provided that its non-application is justified by objective considerations

1.4. Confirming/ensuring that the Directive covers any natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration.[292]

Member States affected:

[292] These criteria are based on the jurisprudence of CJEU as developed since case Lawrie-Blum, C-66/85, and most recently stated in C-216/15 Ruhrlandklinik.

- Workers working less than 8 hours per week excluded by the Directive in CY, DK, MT, SE.
- Workers employed for less than one month excluded by the Directive in AT, CY, CZ, DK, FI, DE, EL, IE, LT, MT, SK, ES, UK, possibly in SE
- Domestic workers not covered by the Directive: HU, NL, SE, and possibly BG, HR, CZ, DK, EE, IE, PL, SK, SL
- Platform workers not covered by the Directive: AT, FR, HU, LT, LV, LU, PL, SL, SE, UK, and possibly BG, HR, CZ, DE, EE, EL, IE, IT, MT, NL, PT, RO, SK
- Voucher based workers not covered by the Directive:
  AT, BG, CY, CZ, DK, EE, DE, EL, HU, IE, IT, LT, LV, LU, MT, PL, PT, SK, SL, SE, UK and possibly RO. However, it must be noted that in many of those MS, voucher work does not exist. In the six MS that have regulated voucher workers, they either have a specific regulation regarding voucher workers (in Croatia) or they are covered by standard labour law (for example in Spain). Voucher-based work is reported to be used in about a third of EU Member States (AT, BE, EL, FR, HR, IT, LT, NL and SI). Where data are available, they show an increasing trend in voucher-based employment.
- Paid trainees not covered in CZ, FI, HU and possibly AT, BG, HR, EE, IE, RO, SK, SE, UK
- Zero-hour contract workers not covered by the Directive: AT, HU, LV, LT, SL (illegal – no change needed) + EE, DE, LU, MT, PT (do not exist either in law or practice yet) and possibly BG, HR. CY. CZ, DK, IE, IT, PL, RO, SK, UK
- On-demand workers not covered: AT, LV (illegal – no change needed) + EE, LU, MT, PT (do not exist either in law or practice yet) and possibly BG, HR, CY, CZ, DK, IE, IT, PL, RO, SK, SL, UK
- Intermittent workers not covered: LU, MT (do not exist either in law or practice yet) and possibly AT, BG, HR, CY, CZ, DK, HU, IE, IT, PL, SK, SL, UK
- Temporary agency workers not covered: AT, UK and possibly BG, CZ, EL, ML, SL

To facilitate the practical implementation of the Directive, the proposal permits Member States to provide that very short relationships fall outside scope of the Directive[293] by including a *threshold of up to 8h per month* (sub-measure 1.5.). This aims at avoiding uncertainties on relationships that are of extremely marginal nature and where the protection provided for by the proposal may be disproportionate.

[293] In the calculations of the CBA it is assumed conservatively only the removal of current exclusions not knowing which MSs will adopt the new threshold. This derogation does not apply to an employment relationship where no guaranteed amount of paid work is predetermined before the employment starts.

2. A right to information on the applicable working conditions

This measure updates Article 2 of the Written Statement Directive, taking into account the deficiencies identified by the REFIT evaluation and the inputs from Social Partners during the first and second phase consultations.

It does so by introducing new elements relating to (i) duration and conditions of probation, if any, (ii) training entitlements, if any, (iii) arrangements for overtime and its remuneration (in the light of CJEU judgment in Lange (C-306/07) that such information forms part of the 'essential aspects of the employment relationship' about which the worker should be informed in the written statement), (iv) key information about the determination of variable working schedules, to take account of the increasing prevalance of such types of work organisation such as casual or zero-hours contracts, (v) information about the social security system attached to the employment relationship.

The REFIT evaluation drew attention to the practice in several Member States of providing a template to employers in order to reduce the burden of producing the written statement, and suggested that such a template could be produced at EU level. While the Commission does not consider it feasible to produce a single template intended to apply in all Member State jurisdictions, given the diversity of systems and approaches for which it would have to provide, it considers it would be helpful both to employers and to workers, not only as a way of reducing the burden of compliance for employers but also of improving the quality and consistency of information provided to workers. The provision of such templates by Member States would be mandatory under the revised Directive, as well as their ensuring ease of access for employers to the information provided for in laws, regulations, statutory provisions or collective agreements which they must communicate in the written statement.

Additions to the information package are suggested as specified in the Table in section 5.

All of those measures above would increase transparency and reduce the information disparity between employer and employee. None would add a substantial burden to employers of any size, given that they require no new action but simply extend the list of information to be provided in the written statement and depend on information that is readily available to the employer and would not require additional effort to acquire. The provision by Member States of templates for the written statement, and readily-available information to support the production of the statement, would reduce the burdens on employers further.

To the extent that increased transparency about workers' rights may lead to a greater level of demand from workers to exercise them (notably in respect of training, sickness or maternity/parental leave), there may be an indirect impact increasing costs for employers and/or for the state. This is likely to be substantially outweighed by the benefits in productivity, worker retention, and health deriving from greater use of these rights.

To the extent that the provision of some types of information may constrain - by making visible and so potentially opposable in a court of law - unscrupulous employers' scope to

use unfair or abusive practices (such as excessive probation periods, unfair dismissal, highly variable and unstable working hours), the extended information package would contribute to fulfilling Principle 5 "Secure and Adaptable Employment" of the European Pillar of Social Rights[294] and Article 31 "Fair and just working conditions" of the European Charter of Fundamental Rights. It would also help create a level playing field for competition among undertakings in the single market, by reducing the scope for competition based on "social dumping".

Action is required at EU level to prevent the existence of different regulatory requirements in individual Member State jurisdictions, which create scope for undertakings in some Member States to take advantage of weaker information requirements vis a vis employees, while those in others are prevented by law from doing so (regulatory arbitrage). Such an effect could not be achieved by Member States acting on their own. Given the modest cost of compliance for employers, and the ready availability of information to fulfil the additional information requirements, the measures are proportionate to the economic and social aims sought.

There is a strong interaction of this measure with policy measure 1 (clarification and extension of personal scope) – due to the need to adapt the information requirements to the specificities of a wider range of (atypical) employment relationships, should these be brought within scope of the Directive – and with policy measure 4 (new minimum rights for all) – which would complement the obligation to provide information with a minimum standard to be observed with regard to several items on the list.

3. Shortening the two-month deadline for issuing a written statement

The considered measure is to require that written statements are provided at the latest on the first day of the employment relationship.

In terms of potential benefits, the provision of information at the start of the employment relationship could contribute to both improved employee protection and the fight against undeclared work. It could also help workers who move between short-term jobs without ever receiving a written statement on their rights.

As an example, the recent legislative move made by Poland is worth highlighting. The country recently changed its legislation so that the written statement must now be provided before the start of the employment relationship, and not at the end of the first day, as was the case before.[53] According to the Polish authorities, under the previous approach, employers faced with an inspection could falsely argue that the worker had just been employed and that he/she would be provided with the written information by the end of the first working day. In practice, this rule tended to favour undeclared work.

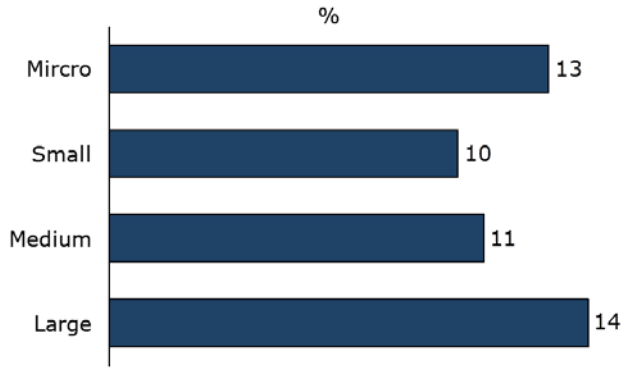
At the same time, arguably, the shorter deadline could be more complicated for employers to comply with. Already the two-month deadline was pointed out by the High

[294] C(2017)2600 final

Level Group on Administrative Burdens as a particular aspect of the Directive, which should be looked at with a view to further simplification.[295]

The REFIT evaluation of the Directive paid therefore a particular attention to burdens related to the deadline but did not confirm the concerns of the High Level Group on Administrative Burdens. The following figure shows that only a small share of respondents found the time limits particularly burdensome.

Figure 3. Share of respondents across the eight surveyed countries who found the time limits in which to provide the information to the employee particularly burdensome



Source: Survey, Ramboll calculations

The employer survey showed that there were no major differences in how burdensome the timeframe was perceived to be, regardless of whether it preceded the start of employment (in PL and BG), was set at one month (DE, FR, SE, IT) or at the maximum two months (UK).

4. New minimum rights for all workers

As shown in the problem definition, while labour market flexibility is an important driver for job creation and growth, extreme flexibility of individual work arrangements without protection of basic standards for workers has created situations which can jeopardise working and living conditions, equal treatment, fair competition between employers across the EU and overall social cohesion and equity.

Indeed, a minimum level of predictability can prove extremely important for living and working conditions, work-life balance and health of workers in the most flexible forms of employment.

[295] European Commission, High Level Group on Administrative Burdens (2009): Opinion of the High Level Group. Subject: Stakeholders' suggestions ('offline-consultation') – V.

This could include, for workers whose work schedule is mainly variable and mainly determined by their employer:

- Right to defined reference days and hours within which work may be required

- Right to a reasonable minimum advance notice before a new assignment or a new period of work

In addition, for all workers:

- Prohibition of exclusivity clauses and limiting restrictions on incompatibility clauses to objectively justified situations.

- Right for a worker to request another form of employment (permanent, more stable and predictable) after achieving a certain degree of seniority with his/her employer and receive a reply in writing, which could ease the transition from extremely flexible forms of atypical work to other forms of work (e.g. full time, or permanent work).

- Right to a maximum duration of probation of 6 months where a probation period is foreseen, unless justified or in the interest of the worker.

- Right to receive free of cost training which employers are obliged by EU legislation, national legislation or collective agreements to provide to workers.

Right to predictability of work

consisting of:

- *Right to defined reference days and hours within which work may be assigned*

Flexibility in work schedules is entirely determined by employers for about two-thirds of workers in Europe.[296] For casual workers, working schedules vary and cannot be fully predicted. Nonetheless, workers and employers could be assigned reference days (e.g. Monday to Friday, or week-end, or any mix of days) or hours (e.g. 8 to 17 or 13 to 24 etc.) in which the worker might be called to perform work. A worker would in this way know the days and times in which he or she can organise other work or other engagements. This would limit the detrimental effects or even the impossibility to plan other engagements of a professional or private nature, improving work-life balance and allowing additional work to be taken on and so reduce under-employment. This would still allow a worker who wishes to do so to accept work beyond these periods, but cannot suffer detriment if he or she refuses.

- The right to reference hours has been introduced and casual workers (including on-demand workers) are covered: BE, HR, DK, EL

[296] Eurofound, sixth European Working Conditions Survey, 2016

- The right to reference hours has been introduced, but on-demand workers are excluded: CZ, IT (definitely excluded), SK, PL, SL (depends on the employment contract)

- The right to reference hours has not been introduced, but casual workers (especially on-demand workers) exist in law and would directly benefit: FR, DE, HU, NL, SE

- The right to reference hours has not been introduced and casual workers (especially on-demand workers) are not recognised in law and therefore require Option 1 in order to be covered by this right: BG, CY, EE, FI, IE, LU, MT, PT, RO, ES, UK.

- The right to reference hours is not introduced, but on-demand work is prohibited: AT, LV, LT

- **An example from Member States:**
- In **Belgium**, part-time workers with variable schedules can only be called for work within the working schedules mentioned in the internal rulebook of the workplace ('Règlement de travail'). This rulebook is negotiated between employers and workers and a copy of it is given to workers when they start working.

- Right to a reasonable minimum advance notice before a new assignment

The scheduling of work hours or assignments is a recurrent issue for part-time and on call workers. In some Member States social partners negotiate reasonable scheduling notice and - where possible - secure and regular shifts.

For casual workers, work assignments or periods of work are not predictable but are rather on-demand depending on needs of the employer. Setting a minimum advance notice period, as is done in some Member States,[297] would allow a minimum level of predictability and a minimum planning of work needs also in undertakings which make extensive use of casual work. This would limit the detrimental effects of the impossibility or difficulty to plan other engagement of a professional or private nature, so improving work-life balance and potentially allowing additional work to be taken on.

This would still allow a worker who wishes to do so to accept work beyond these periods, but cannot suffer detriment if he or she refuses.

- The right to a minimum notice period has been introduced and casual workers (including on-demand workers) are covered: DK, DE, HU, IT, SL, ES, SE

[297] Germany, Hungary, Italy.

(always), PT (intermittent included, but on-demand and zero-hours contracts have not yet occurred in PT)

- The right to minimum notice period has been introduced, but on-demand workers are excluded CZ, FR (for all), IE (depending on contract)

- The right to minimum notice period has not been introduced, but casual workers (especially on-demand workers) exist in law and would directly benefit: NL

- The right to minimum notice period has not been introduced and casual workers (especially on-demand workers) are not recognised in law and therefore require Option 1 in order to be covered by this right: BE, BG, HR, CY, EE, EL, FI, LU, MT, PL, RO, SK, UK

- The right to minimum notice period is not introduced, but on-demand work is prohibited: AT, LV, LT

- **Examples from Member States:**

- In **Germany**, the employer shall respect a minimum advance notice period of **four days**. This period can be modified by collective agreement. .

- In **Hungary** in so called *call for work contracts* the employer needs to inform the employee at least **three days** prior to the day of work.

- In **Italy**, a minimum notice of **one working day** is required for intermittent work.

- In **Portugal** for intermittent workers get a notice of **20 days** for each period of work.

- In **Belgium**, part-time workers with variable schedule have to be notified **five days** in advance of their work schedule. This period can be modified by collective agreement.

Prohibition of exclusivity clauses

Exclusivity clauses impede workers to take on any other work at all. Incompatibility clauses impede them from taking on work with certain other employers. Exclusivity and incompatibility clauses can put a disproportionate burden on the worker who has limited possibilities for ensuring not only income security and stability, but also to seek further work to reduce the risk of poverty. In economic terms, exclusivity and incompatibility clauses exacerbate situations of underemployment.[298]

Examples from Member States:

In the **Netherlands** exclusivity clauses in flexible employment agreements (temporary)

[298] EP-IPOL Economic and scientific policy, *Precarious Employment in Europe: Patterns, Trends and Policy Strategy*, 2016

are allowed but only exceptionally. The inclusion of this kind of clause needs to be motivated explicitly in writing in the contract of employment.

In the **UK**, for zero-hours workers exclusivity clauses have been deemed abusive and have become unenforceable since May 2015**.** The law of 26 May 2015 was introduced for preventing employers from enforcing 'exclusivity clauses' in a zero-hours contract restricting workers from working for other employers.

In **Spain, Romania, Italy, Germany**, exclusivity clauses are considered as illegal as in breach with the principle of freedom to work or right to employment.

In the **Czech Republic** the employee may only prevented from performing work for an employer with the same or similar objective of the activity as the main employer.

Possibility to request another form of employment and receive a reply in writing

Many workers in non-standard and new forms of work are in this situation involuntarily, which leads to precariousness, underemployment and segmentation of the labour market. A possibility to request another more favourable form of employment (e.g. longer hours for very marginal part-time, or a part-time contract for casual workers), where available, after achieving a certain degree of seniority with his/her employer, and with the corresponding duty on the employer to give a reply in writing, would create space for dialogue between worker and employer on career possibilities in the undertaking and stimulate changes in employment statuses. Such a right might also support social dialogue to ease transitions to more secure and predictable work for workers that have proven their working skills and have developed on-the-job skills.

The EU social acquis already includes similar provisions for certain types of worker; under the Part-Time Directive, employers should give consideration, as far as possible, to (a) requests by workers to transfer from full-time to part-time work that becomes available in the establishment, (b) requests by workers to transfer from part-time to full-time work or to increase their working time should the opportunity arise; (c) the provision of timely information on the availability of part-time and full-time positions in the establishment in order to facilitate transfers from full-time to part-time or vice versa.[299] The Fixed Term Work Directive provides that employers shall inform fixed-term workers about vacancies which become available in the undertaking or establishment to ensure that they have the same opportunity to secure permanent positions as other workers. Such information may be provided by way of a general announcement at a suitable place in the undertaking or establishment.[300] Member States have transposed those provisions in their national legislation but few have implemented any more favourable measures such as obliging the employer to provide a reasoned reply to this request or granting a priority for part-time workers to access available full time positions in the undertakings.

[299] Clause 5, Directive 97/81 on Part Time Work

[300] Clause 6, Directive 1999/70 on Fixed Term Work

The Parental Leave Directive already provides for the possibility to ask for two types of flexible working arrangements (working patterns and working hours) for parents returning from parental leave.[301] The proposal for a Directive on Work-Life Balance for parents and carers introduces a proposed right, for workers with children up to at least 12 years old, to request flexible working arrangements for caring purposes; employers would have then a duty to consider and respond to requests for flexible working arrangements, taking into account the needs of both employers and workers, and justify any refusal of such a request. Employers would also have the obligation to consider and respond to requests to return to the original working pattern.[302]

Examples from Member States:

In **France**, the employer is obliged to inform atypical workers of available open ended contract in the company (without obligation to reply to request). Part time workers willing to be employed full time benefit from a priority in their employment, the same for night workers wanting to return to day work.

In **Romania** employers are obliged to inform fixed-term workers about vacant permanent jobs and grant them equal conditions of accessing such jobs as those granted to the permanent employees. Employers are also obliged to take into consideration part-time workers' requests of transfer from part-time to full time or vice versa, or to extend the duration of working time (the workload), and to provide information on vacant positions in due time to facilitate such transfers.

In **Spain** part-time workers may request to work full time and full time workers may request to work part time. Employers must reply in writing; in case of refusal they must motivate the answer.

In the **UK** the Right to Request Flexible Working was extended in 2014 to all employees with 26 weeks' continuous service. A right to permanent employment exists after four years for fixed-term workers (unless there is a business reason not to do so). Casual/atypical workers are covered as long as they have an employee status (rather than worker). The Taylor et al. (2017) review suggests the following changes: (1) a right to request a direct contract of employment for agency workers who have been placed with the same hirer for 12 months, (2) for zero hours workers a right to request a fixed hours contract.

In **Germany**, some collective agreements guarantee a preferential treatment of part-timers who wish to work full-time and an obligation of the employer to inform on vacancies. A part time worker has a priority for a full time position if they want.

[301] Directive 2010/18

[302] Article 9, Proposal for a Directive on Work-Life Balance, COM(2017) 253

Right to a maximum duration of probation period

Probation periods offer the worker the opportunity to be supported and developed to meet the requirements of the job, and the employer to test the suitability of the worker for that job. During probation periods, the conditions attaching to the termination of the employment contract are often light and some protective measures that normally apply in case of dismissal are absent (e.g. notice period and severance pay). Setting a maximum duration for probation periods would prevent abuse of overly long probation periods, in which employment rights are inferior to standard employment.

Examples from Member States:

- The **Czech Republic, the Netherlands, Portugal, Romania, Spain and Lithuania** have specific regulations regarding probation periods for fixed term workers, which are shorter than for workers with open-ended contracts.

- In the **Czech Republic**, if there is a probation agreed, it has to be made in writing and may not be longer than 3 months (6 months in the case of managers). In the case of fixed-term contracts it may not be longer than one half of the agreed period of the employment relationship.

- In **Belgium** there is currently only a probation period for agency work and student work. The general probation period was abolished in 2014. At the time of writing, the government was planning to reintroduce a probation period for all workers but without the same consequences as the old one: rather mainly entailing shorter notice periods in the beginning of the contract.

- In **Austria** employees may be subject to a probationary period of up to one month. This applies to all classed as "employees". The probation period is 3 months for apprentices.

Right to receive cost-free training which employers are required to provide in EU legislation, national legislation or collective agreements

There is generally no statutory obligation to provide occupational training beyond health & safety training, which is often covered by collective agreements.

Examples from Member States:

In the **Netherlands** employers have a statutory obligation to provide any training necessary to enable an employee to perform satisfactorily in their job and – as far as this

can reasonably be expected of the employer – in order to continue the employment contract, even if the employee's job ceases to exist or their performance falls. Under certain conditions, an investment by an employer in making an employee more broadly employable before their contract is terminated can be deducted from the financial entitlement to a transition allowance. Under certain conditions, it will also be possible for money invested by the employer in making the employee more employable to be deducted before their contract is terminated.

In **France**, the Personal Training Account is an individual right of an employee to 150 hours of training in more than 7 years (20 hours each year over 6 years then 10 hours per year thereafter). The Account can be used by the individual to follow any (registered in a national list decided mainly by social partners end employers) training course and is funded via a levy on companies (1 per cent of the wage bill for large companies 0.55 per cent for small companies).

In **Estonia**, employees are obliged by law to improve their skills. For this purpose, employers are also responsible for developing the knowledge and skills of their employees and they are required to provide employees with training according to their interests, to bear the costs and to pay the usual wage during the training.

5. Enforcement

Rights are only meaningful when they are taken up by rights holders. Both the REFIT evaluation of the Directive, and the public consultation on the Pillar, have underlined the importance of enforcement mechanisms to ensure workers that their rights are respected. This has also been underlined by the recent Communication on better application of EU law.

One of the conclusions of the public consultation on the European Pillar of Social Rights[303] was that very often, citizens are deprived of their rights due to a lack of implementation and enforcement. In the context of EU labour law, unlike in other areas, there are very few EU rules directly concerned with enforcement of rights. Experts highlighted various ways to close the enforcement gap. One proposal is to ensure that legislation in the field of labour law contains procedural provisions for enforcement, such as provisions improving access to justice, supporting persons whose rights have been denied to initiate litigation, protecting against victimisation and providing for basic rules on remedies and dissemination of information. It was pointed out that inspiration could be drawn from existing instruments e.g. in the field on non-discrimination or free

[303] Delivering on the European Pillar of Social Rights, http://ec.europa.eu/social/main.jsp?catId=1226&langId=en , and Public consultation on the European Pillar of Social Rights http://ec.europa.eu/social/main.jsp?catId=333&langId=en&consultId=22&visib=0&furtherConsult=yes

movement, where a range of enforcement tools have been adopted in recent years. Others asked for more and better labour inspections.

The REFIT evaluation of the Written Statement Directive also indicated that enforcement of workers' rights under the Directive could be improved by rethinking means of redress and sanctions for non-compliance.[304]

The Directive, in its Article 8, establishes the right for employees who consider themselves wronged by an employer's failure to comply with its obligations to pursue their claims by judicial process. Member States may establish two steps that would precede a judicial process: (i) recourse to a competent authority such as a labour inspectorate or an administrative body; (ii) a formal notice given to the employer calling on it to issue the written statement within 15 days.

The REFIT evaluation has confirmed that all Member States provide for access to the relevant national court which is in general the Labour Court[305]. As regards sanctions imposed on employers who fail to comply, the REFIT evaluation distinguishes between: (i) a majority of Member States where financial compensation can be granted only to employees who prove that they have suffered damage; and (ii) a minority of Member States where sanctions such as lump sum penalties or loss of permits can be imposed in addition on the employer for failure to issue the written statement.

The REFIT evaluation concluded that redress systems based only on claims for damages are less effective than systems that also provide for sanctions such as lump sum penalties. The limited extent of case law indicates that workers whose rights under the Directive have been infringed are reluctant to pursue litigation while in employment. Generally any litigation is related to the working conditions themselves not to the absence of information about them.

To achieve the goal of the Directive its enforcement must be ensured through adequate redress via enforcement authorities and appropriate and dissuasive sanctions.

The revision proposes to improve the enforcement by requiring Member States to:

5.1: make sure that a 'competent authority' can find or impose a solution in case a worker does not receive a written statement, if the omission is not rectified in 15 days following notification;

5.2: set up a formal injunction system to the employer, possibly accompanied by a possibility of a penalty;

[304] SWD (2017)205, page 3, 4

[305] SWD 2017(2611) Refit evaluation of the Written Statement Directive

5.3: establish favourable presumptions for the employees as regards their working conditions in case of (unlawful) absence of written statements (proportionate to the missing elements) if the omission is not rectified in 15 days following notification.

5.4. enlarge the enforcement provisions of the revised Directive based on enforcement provisions already in place under EU anti-discrimination and gender equality law.

Examples from Member States:

In **Luxembourg**, in case of absence of information regarding the existence of a fixed-term employment contract, there is a presumption that the contract is concluded for an indeterminate term.

In **France**, in the absence of a written statement for a fixed term contract, the contract is deemed to be a permanent one. If the worker raises a complaint in front of the court the contract is automatically requalified as a permanent one.

In **Latvia**, in case an employer failed to conclude an employment contract in a written form before the commencement of a work and an employee is not able to prove the length of the employment relationship, working time and remuneration, it has to be presumed that a worker has been employed for 3 months with normal weekly working time (40 hours) and minimum pay as defined by the law.

In **Denmark**, questions as to whether the employer has complied with his/her obligation to provide information shall be decided by the Employment Committee of the National Social Appeals Board.

In the **Netherlands**, following case-law, when the employer has not fulfilled the information obligations, a shift in burden of proof regarding the type of employment and employment conditions applies. It is for the employer to prove that the allegations of the claimant employee are not accurate.

In **Ireland**, the Adjudication Service (formerly Rights Commissioner) investigates and decides on claims brought by individual or small groups of workers. The employer has 56 days to carry out the decision of the adjudication officer. If the employer fails to do so, the worker, the worker's trade union or a body that represents the interests of a particular group of workers may apply to the District Court for an order directing the employer to do so. In general, the District Court must make the order.

The possibility to access to dispute resolution through a judicial process is provided in all Member States. In five Member States (BE, CZ, DE, SL, SK) there is a possibility of arbitration, although in some countries arbitration is accessible only in case of collective agreements or collective disputes (SL, CZ).

Almost all Member States[306] have the option of mediation available for labour disputes, although in most of them it is only rarely used.

Most Member States have provided for redress in case of non-compliance with the rights conferred by the Directive either in civil courts or special labour courts.

In addition, in several Member States labour inspectorates have a monitoring and/or enforcement responsibility, which varies in terms of initiative and instruments available. In most countries, the inspectorates monitor employers' activity and have the power to (1) ensure compliance through coercive orders; and (2) impose fines when breaches are identified at the end of/during inspective actions and procedures.

In almost a third of the Member States the only available means for redress is litigation before civil or labour courts, which is considered particularly ineffective as means of enforcement when the only available remedy is the award of damages.

In 10 MSs there is no competent authority that can impose a remedy in case of lack of written statements: AT, BE, DE, FR, HR, LU, NL, SE, SL, UK

In 14 MS there is no formal injunction system with lump sum in case of lack of written statements: AT, BG, CZ, DE, FI, FR, LU, LV, NL, PT, RO, SE, SL, UK

In 22 MS in case of (unlawful) absence of written statements, there are no favourable presumptions made for the employees as regards their working conditions: AT, BG, CY, CZ, DK, EL, ES, FI, FR, HR, HU, IE, IT, LT, MT, NL, PL, PT, RO, SE, SK, UK.

Following the evolution of the EU acquis and case-law in the field of gender equality and antidiscrimination in the last 30 years, now all 28 Member States have put in place enforcement provisions that apply to the interaction between worker and employer. This includes provisions on defense of rights, burden of proof, compensation or reparation, protection against adverse treatmnet or victimisation, penalties, compliance and dissemination of information.

Only one MS does not have judicial procedures available for enforcement, also after the employment relationship has ended.

The measures set out above could not only reinforce enforcement of workers' rights by improving their right to redress in case of non-compliance but also avoid long and costly litigation that could be unproductive at the start of employment relationship for a worker and burdensome for the employers.

Many national experts contributing to the study underlined that the level of compliance by employers is linked to the level of enforcement by public authorities or action by

[306] BE, HR, CZ, EE, FR, HU, IE, LV, LT, MT, NL, PT, RO, SK, SL, SE, UK.

trade unions. Several experts witnessed an increase in compliance due to stronger labour inspectorates, presumptions in favour of the employee or due to newly introduced fines.

The provisions of 5.1 to 5.. would provide benefits to workers through the actual application of the rights provided in the revised Directive in their everyday working life.

The policy package 5 is clearly dependent on the rights provided for in measures 2 (information), 4 (new rights) and on the personal scope provided in 1.

These packages depend fully on effective compliance supporting the take-up of rights, which in turn depends on effective enforcement arrangements. Otherwise the expected benefits presented in this assessment will be negated or mitigated.

6. Overview of legal changes required per Member State

Table. 1. Extended scope, strengthened information and shorter deadline

Member State	Would the legal change be required?							
	1. A scope of application encompassing all EU workers, in particular the most precarious		***2. Introducing the right to information on the applicable working conditions***					***3.Shortening of the deadline to the same day or before***
	Inclusion of workers working less than 8h/week	**Inclusion of workers employed for less than 1 month**	**Probation period**	**Social security system**	**National law applicable in case of termination of contract**	**Precise working time**	**Templates**	
AT	No	Yes	Yes	Yes	No	Yes	No	No
BE	No	No	Yes	Yes	Yes	Yes	Yes	No
BG	No	No	No	Yes	Yes	Yes	Yes	No
CY	Yes	Yes	No	No	No	No	No	Yes – 1 month
CZ	No	Yes	No	Yes	Yes	No	Yes	Yes – 1 month
DE	No	Yes	No	No	Yes	Yes	Yes	Yes – 1 month
DK	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes – 1 month
EE	No	No	No	Yes	Yes	Yes	No	No
EL	No	Yes	No	No	No	No	No	Yes – 2 months

ES	No	Yes	No	No	Yes	Yes	No	Yes – 2 months
FI	No	Yes	No	Yes	Yes	Yes	No	Yes – 1 month
FR	No	No	No	No	Yes	Yes	No	No
HR	No	No	Yes	Yes	Yes	Yes	Yes	No
HU	No	No	No	Yes	Yes	No	Yes	Yes – 15 days
IE	No	Yes	Yes	Yes	Yes	No	No	Yes – 2 months
IT	No	No	No	Yes	Yes	Yes	Yes	No
LT	No	Yes	No	Yes	Yes	No	No	No
LU	No	No	No	Yes	Yes	No	No	No
LV	No	No	No	No	Yes	No	No	No
MT	Yes	Yes	No	Yes	Yes	Yes	No	No
NL	No	No	No	No	Yes	Yes	Yes	Yes – 1 month
PL	No	No	No	Yes	Yes	Yes	No	No
PT	No	No	No	No	Yes	Yes	Yes	Yes – 2 months
RO	No	No	No	Yes	Yes	Yes	No	No
SE	Yes	Possibly	Yes	Yes	Yes	Yes	Yes	Yes – 1 month
SI	No	No	No	Yes	Yes	Yes	Yes	No
SK	No	Yes	No	Yes	Yes	Yes	Yes	Yes – 1 month
UK	No	Yes	Yes	No	No	No	No	Yes – 2 months

No –the right is already included in the national legislation, no legal change would be required

Yes – legal change would be required

Table 2. New minimum rights

Member State	Would the legal change be required?					
	4. New minimum rights for all workers					
	Minimum predictability of work		Prohibition of exclusivity clauses	Possibility to request transfer to another form of employment and receive a reply in writing	Right to a maximum duration of probation period of 6 months	Right to cost-free training required in legislation and collective agreements
	Reference days and hours	Minimum advance notice				
AT	No - on demand work is prohibited	No - on demand work is prohibited	Yes	Yes	No	No
BE	No	Yes	Partially – exclusivity clauses allowed under certain conditions	Yes	No	No
BG	Yes	Yes	No	No	No	No
CY	Yes	Yes	Partially – prohibition with exceptions	No	No	No
CZ	Yes	Yes	Partially – exclusivity clauses allowed under certain conditions	Yes	No	No
DE	Yes	No	Partially – prohibition with exceptions	No	No	No

DK	No	No	Partially – prohibited only for casual workers	Yes	No	No
EE	Yes	Yes	No	Yes	No	No
EL	No	Yes	Partially – exclusivity clauses allowed under certain conditions	No	No	No
ES	Yes	No	Partially – exclusivity clauses allowed under certain conditions	No	No	No
FI	Yes	Yes	Partially – exclusivity clauses allowed under certain conditions	Yes	No	No
FR	Yes	Yes	Yes	No	No	No
HR	No	Yes	Yes	No	No	No
HU	Yes	No	Partially – exclusivity clauses allowed under certain conditions	Yes	No	No
IE	Yes	Yes	Partially – exclusivity clauses allowed under certain conditions	No	Yes	No
IT	Yes	No	Partially – exclusivity clauses allowed under certain conditions	Yes	No	No
LT	No - on demand work is prohibited	No - on demand work is prohibited	Yes	No	No	No

LU	Yes	Yes	Yes	No	No	No
LV	No - on demand work is prohibited	No - on demand work is prohibited	Partially – exclusivity clauses allowed under certain conditions	Yes	No	No
MT	Yes	Yes	Yes	Yes	No	No
NL	Yes	Yes	Partially – exclusivity clauses allowed under certain conditions	No	No	No
PL	Yes	Yes	Partially – prohibition with exceptions	Yes	No	No
PT	Yes	Partially – only intermittent	Partially – exclusivity clauses allowed under certain conditions	No	No	No
RO	Yes	Yes	Partially – prohibition with exceptions	No	No	No
SE	Yes	No	Yes	Yes	No	No
SI	Yes	No	Partially – prohibition with exceptions	No	No	No
SK	Yes	Yes	Partially – exclusivity clauses allowed under certain conditions	Yes	No	No
UK	Yes	Yes	Partially – prohibited only in cases of zero-hours contracts	No	Yes	No

No –the right is already included in the national legislation, no legal change would be required

Yes – legal change would be required

Table 3. Enforcement

Member State	Would the legal change be required?			
	5. Enforcement			
	Competent authority	Formal injunction system	Inclusion of favourable presumptions made for the employees as regards their working conditions in case of (unlawful) absence of written statement	Enforcement provisions that already apply to the interaction between worker and employer in the field of gender equality and antidiscrimination
AT	Yes	Yes	Yes	Partially
BE	Yes	No	No	Partially
BG	No	Yes	Yes	Partially
CY	No	No	Yes	Partially
CZ	No	Yes	Yes	Partially
DE	Yes	Yes	No	Partially
DK	No	No	Yes	Partially
EE	No	No	No	Partially
EL	No	No	Yes	Partially
ES	No	No	Yes	Partially
FI	No	Yes	Yes	Partially
FR	Yes	Yes	Yes	Partially
HR	Yes	No	Yes	Partially
HU	No	No	Yes	Partially
IE	No	No	Yes	Partially
IT	No	No	Yes	Partially
LT	No	No	Yes	Partially
LU	Yes	Yes	No	Partially

LV	No	Yes	No	Partially
MT	No	No	Yes	Partially
NL	Yes	Yes	Yes	Partially
PL	No	No	Yes	Partially
PT	No	Yes	Yes	Partially
RO	No	Yes	Yes	Partially
SE	Yes	Yes	Yes	Partially
SI	Yes	Yes	No	Partially
SK	No	No	Yes	Partially
UK	Yes	Yes	Yes	Partially

No –the right is already included in the national legislation, no legal change would be required

Yes – legal change would be required

7. Mapping of relevant collective agreements

Table 1: *Transposition of the current Written Statement Directive into national law (fully or partially) via Collective Agreements.*

Country	Collective Agreements used for transposition?
Austria	No
Belgium	Partly, through National collective agreements no. 35 (part-time) and no. 108 (agency work), collective agreement no. 85 (telework) complement national legislation on the WSD requirements.
Bulgaria	No
Croatia	No
Cyprus	There are different collective agreements covering sectors or industries. In 2011, the Ministry of Labour listed 19 industry level agreements in the private sector on its website, including agreements for construction, banking, private hospitals and the clothing industry and the hotel sector. However, although industry level bargaining continues to be important, many companies, both inside and outside the coverage of the industry level agreements, negotiate at company level. The Department of Labour Relations estimates that there are 450 company level agreements, in some cases setting the pay and conditions of those not covered at industry level, in others improving on the industry rates. Both unions and employers consider that the balance between company and industry-level bargaining may be shifting, with company level bargaining becoming more important. It seems likely that the level of coverage has fallen over time, and the union membership and collective bargaining estimated the overall coverage of collective bargaining at 52% in 2008. There has been a decline since, particularly after 2013.
Czech Republic	No
Denmark	No, however the transposition Act (Ansættelsesbevisloven) does provide that the Act does not apply if the employer's obligation to inform the employee of the employment conditions is covered by a collective agreement and that the rules of this agreement, as a minimum, correspond to those of the WSD. Most collective agreements refer to 'Ansættelsesbevisloven' and set out the various conditions for providing the employee with proof of his/her employment conditions.
Estonia	No
Finland	No
France	No
Germany	No, transposition took place through law. However, there are nine different sector-specific collective agreements with regulations related to the Written Statement directive.
Greece	No
Hungary	No
Ireland	No
Italy	Partly. The WSD was transposed via a Decree, but further employers' obligations to inform might be required by single collective agreements, where applicable.
Latvia	No
Lithuania	No
Luxembourg	No
Malta	No
Netherlands	No
Poland	No
Portugal	No
Romania	No
Slovakia	No

Slovenia	No
Spain	No, however, provisions imposing certain informative obligations on the employer may be found in some collective agreements.
Sweden	No, although collective agreements do exist which deal with further implementation.
UK	No

Table 2: *Collective Agreements establishing additional rights to non-standard workers*

Country	Do Collective Agreements exist which provide additional rights?
Austria	No, but the existing rights provided for atypical workers are quite high, and in particular sectors collective agreements have raised the bar even further.
Belgium	Yes, complementary to legislation, there is Collective Agreement nr. 35 on part time work, Collective Agreement nr. 108 on temporary work. Also sector or company level CA's may exist, e.g. putting down further conditions on temporary work, or agreeing on the use of fixed term workers. Rules on non-competition clauses are laid down in art. 65, 86 and 104 to 106 of the Act of 3 July 1978 on employment contracts and Collective agreement no. 1bis of 21 December 1978.
Bulgaria	In the available Collective Agreements there are no explicit references to the directive; it is transposed in the labour legislation. Actually, Collective Agreements arrange those rights and issues that are not treated by the legislation – see art. 3 of the Collective Agreement of the metal sector. In addition, as atypical work is relative rare in Bulgaria, the Collective Agreements focus on the core workers on open ended contracts.
Croatia	Partly. Collective agreements usually define different duration of the probation period for the working places of lower and higher complexity.
Cyprus	No
Czech Republic	EU directives are transposed via legislation only. The reason is that the collective bargaining takes place predominantly at the company level and the coverage by collective bargaining is not high. Thus, the WSD and its provisions are not an issue of collective bargaining
Denmark	Many collective agreements indicate that the parties (employer & employee) can come to an agreement on a different type of employment form/contract, for example a permanent contract.
Estonia	No
Finland	No
France	No, but probation period or notion periods can be regulated through collective agreements.
Germany	Some Collective Agreements improve the standards of the NachwG and other German laws to protect precarious workers. The most important improvements are: - a written contract must be signed before the start of work or within a month - in some agreements the content of the written contract is specified mostly according to the NachwG - some agreements set additional standards for part-timers especially (a) minimum hours per week (b) minimum hrs per day (c) right to request a contract with more weekly hrs and (d) minimum period of notice - a right to request part-time work for defined periods - defined right to do a second job - preferential treatment of part-time if there are job vacancies and equal right to attend further training
Greece	No
Hungary	The term of the probationary period may not exceed six months as provided for in

	the collective agreement. Though not related specifically to rights 5.1 – 5.5, the collective agreement also provides for a working time bank, for example enabling the exchange of overtime for subsequent time off.
Ireland	No
Italy	Not currently, but further employers' obligations to inform might be required by single collective agreements, where applicable. Negotiations are taking place for a Collective Agreement regarding minimum hours.
Latvia	No
Lithuania	No
Luxembourg	No
Malta	No
Netherlands	Only one Collective Agreement on temporary agency work.
Poland	Collective agreements in Poland are most often entered at the level of the company, so it is difficult to get sector specific examples. However, such an example is Grupa LOTOS SA where the Company Collective Labour Agreement applies to employees independently of the system and organization of working time.
Portugal	The average working duration shall be calculated by reference to the period established under a collective agreement that is not more than 12 months. In case of lack of those agreements the period is 4 months. Collective Agreements may reduce the duration of the probation period.
Romania	No
Slovakia	No
Slovenia	No. Some collective agreements may stipulate extra components of an employment contract; however they do not relate specifically to atypical workers.
Spain	Some national agreements, such as the Collective Agreement for Large Retailers and Department Stores, establish a larger minimum notice than the established by law in case of irregular distribution of working hours (7 days instead of 5 days). The same agreement also establishes that for part time workers whose daily working time is less than 4 hours, its distribution on the day must be continuous without any inactive hours in between. The national Collective Agreement for the Chemical Industry (BOE 19 August 2015) establishes a minimum notice of 7 days (instead of 5 days) in case of irregular distribution of working hours. In some regional agreements (vgr Steel Sector, Madrid), there are provisions extending the minimum notice before new work assignments; there are also provisions limiting the daily working hours in case of irregular distribution of working time along the year.
Sweden	The 1982 LAS law allows derogations from Sections 6c, 6d, 6e through a collective agreement entered into or approved by a central/nation-wide trade union, provided that such an agreement does not provide for the application of less beneficial rules to employees. Hence, there might be collective agreements which go further than the Directive. Collective agreements play a large role in the regulation of exclusivity clauses.
UK	No

ANNEX 9: FURTHER INFORMATION ON IMPACTS OF POLICY PACKAGES B, C AND D

1. Impacts of policy package B

	Direct benefits and costs
Direct benefits for workers – right to written statement	• 2.4m-3.2m increase in number of workers having the right to a written statement • 3.5m employees working <8 hours per week having the right to a written statement • 447,000 increase in number of employees working <8 hours per week having the right to a written statement • 1.6m employees with contract duration of <1 month having the right to a written statement • 658,000 increase in number of employees with contract duration of <1 month having the right to a written statement • 1.2m-2.0m increase in number casual workers having the right to a written statement • Employees having: better understanding of basic working conditions & rights at work; clarity in employment relationship; better protection against possible infringements of rights; better access to social security protection through having proof of employment • Better integration of casual, part-time, fixed-term and other atypical workers in other countries due to provision of written statements
Direct benefits for workers – strengthened information package	• 46.3m additional employees having new right to information about duration and conditions of probation periods (of those, 37m whose contracts include probation periods) • 94.4m additional employees having new right to information about social security system into which the employer is contributing • 153.4m additional employees having new right to information about national law applicable in case of termination of contract • 145.2m additional employees having new right to information about working time (including possibility of extra hours) • 4.6m-9.3m additional employees p.a. starting a job and receiving information about duration and conditions of probation periods • 9.4m-18.9m additional employees p.a. starting a job and receiving information about social security system into which the employer is contributing • 15.3m-30.7m additional employees p.a. starting a job and receiving information about national law applicable in case of termination • 14.5m-29.0m additional employees p.a. starting a job and receiving information about precise working time (including possibility of extra hours) • 15.3m-30.7m additional employees p.a. leaving a job having had the right to receive information about national law applicable in case of termination
Direct benefits for workers – shorter deadline (1st or before)	• Increased legal certainty from receiving written statements at an earlier date • 111.7m (60% of EU workforce) additional employees having new right to receive a written statement on the 1st day of employment or before • 11.2m-22.3m additional employees p.a. starting a job and having new right to receive a written statement on the 1st day of employment or before • 717,000 additional workers with contract duration of less than 1 month benefitting from a deadline of 1st day of employment or before
Direct costs for workers	• None

	Direct benefits and costs
Direct benefits for employers	• Modest additional benefits since many employers already provide such information (either as required by national legislation or through choice) • Increased legal certainty for 16% of employers (i.e. those not currently providing a written statement for all employees due to legal exemptions)
Direct costs for employers	• Significant one-off costs for companies to familiarise with the legislation • One-off cost of providing written statements for existing staff that are newly covered by an extension of the Directive: €114m-€152m • Additional costs to provide written statements for new employees that fall within the categories covered by the Directive: • Additional annual cost of providing written statements (assuming 10% staff turnover: €11.4m-15.2m • Additional annual cost of providing written statements (assuming 20% staff turnover: 22.7m-30.3m • Total cost of providing written statements in first year: €125.4m-182.3m • Cost of familiarisation, etc.: €852.5m[307]

	Overall labour market impacts
Change in number of people employed	• Negligible: employers' recruitment decisions unlikely to be significantly affected by an extension of the Directive, strengthened information package or shorter deadline
Change in number of hours worked	• No change
Number of casual workers gaining a second job after prohibition of exclusivity clauses	• No change
Displacement of workers covered by the Directive by workers not covered	• Overall substitution effects arising from provision of written statements likely to be negligible (majority of employers already provide written statements; requirement to provide written statements tends to have negligible influence on recruitment decisions) • Reduction in (already small) risk of workers covered by the Directive being replaced by workers not uncovered • Very slight increase in risk of workers with employment contracts being replaced by informal agreements or self-employment contracts (whether legal or bogus)

	Overall impact on working conditions
Reduction in undeclared work	• Considerable reduction in undeclared work, as absence of a written statement in an employment relationship is often indicative of undeclared work • Reduction in "unwitting" undeclared work by employees not receiving a written statement • Reduction due to reduced deadline for providing written statements (in part because fewer temporary workers will complete their contract before receiving a written

[307] This total amount represents the average cost per company (53 EUR for an SME and 39 EUR for a larger company) multiplied by the number of all companies in the EU. It is likely an overestimation as mostly companies needing to issue new written statements will need to invest in familiarising with the new legislation.

	Overall impact on working conditions
	statement) • Increase ease of detection of undeclared work (provision of information on the employment relationship and the declaration of the relationship to the relevant authorities typically occur at the same time) • Undeclared work occurs most often in sectors with high prevalence of casual work (e.g. construction, catering, agriculture) – bringing casual workers into the scope of the Directive will expose undeclared work and facilitate detection
Reduced abuse of workers	• Increase in number of workers receiving written statement will reduce abuse, as written statements facilitate the control of other working conditions by the relevant body e.g. labour inspectorates • Increase in number of workers having new right to written statement and thus information about collective agreements governing the employee's conditions of work
Workers having better reconciliation between work and family life	• Increase in number of workers having new right to written statement and thus information about amount of paid leave and normal working day • 145.2m additional employees having new right to information about working time will reduce involuntary/inadvertent overtime
More predicable working hours through conversion of on-call jobs into minimum hour contracts	• None
Less abuse of probation periods	• Reduction in abuse of probation periods, as all workers (except small number not covered by a revised Directive) will have information about the duration and conditions of probation period • 27.7m employees (IE, UK) will continue to have no right to a maximum probation period • 5.8m employees (21% of employees in IE, UK) will continue to have probationary periods with no maximum duration • Continuation of abuses linked to lack of statutory maximum probation period (IE, UK) • 137m employees will continue to have statutory maximum probation period >3 months (AT, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IT, LU, MT, NL, PT, RO, SE, SI SK)
Increased ability of workers to gain redress	• Right to a written statement reinforces cases brought related to infringements of other rights
Improved conditions of transnational working and greater mobility	• More harmonised information requirements across the EU • Increase in workers written information will help them to move between employers and have their work recognised • More employees receiving essential information about conditions pertaining to any periods of work abroad

	Overall impact on public finances
Increased tax revenues from change in number of hours worked	• Negligible
Reduction in social security from	• Reduction in fraudulent social security claims linked to bogus self-employment or undeclared work

	Overall impact on public finances
change in employment or hours worked	• Increase in legitimate social security claims due to better employee awareness
Cost of enforcement & support for employers	• Increased costs of enforcement due to higher number of workers covered

	Overall impact on competitiveness and productivity
Significance of administrative costs to overall labour costs	• Increase in compliance and administrative costs is negligible compared to total labour costs • Majority of employers do not find any particular aspect of the current Directive to be particularly burdensome at all
Number or % of employers likely to experience an increase / decrease in competitiveness (taking into account reduction in unfair competition, loss of flexibility, etc.)	• More than 80% of employers are likely to benefit from less "unfair competition", as they already provide written statements for employees working <8 hours per week, employees with contracts of less than one month's duration, on-demand workers and intermittent workers • No loss of flexibility of casual workforce
Number or % of employers likely to experience an increase in staff retention, loyalty and productivity plus a reduction in legal costs, court cases, etc.	• Around 20% of employers who do not currently provide written statements will benefit (the current Directive has been found to increase staff retention, loyalty and productivity plus a reduction in legal costs, court cases, etc. (REFIT))

	Overall impact on application and enforcement
Extent to which options have already been adopted	• Measure 1 (8 hours per week): already adopted in 24 Member States • Measure 1 (<1 month): already adopted in 14 Member States • Measure 2 (information on probation period): already adopted in 21 Member States • Measure 2 (information on social security system): already adopted in 7 Member States • Measure 2 (information on probation period): already adopted in 4 Member States • Measure 2 (information on probation period): already adopted in 9 Member States • Measure 3 (1st day deadline): already adopted in 10 Member States (or shorter) • Measure 3 (before contract formed): already adopted in 7 Member States (or shorter)
Strengthening enforcement and ease of modifying or strengthening means of redress and sanctions	• Significant increase in number of workers receiving right to information (+ more information + earlier) which is essential to gaining justice • Significant contribution due to more accessible redress mechanisms, increased number of employees with their rights protected, stronger legal basis for complaints, increased court cases due to the stronger position of employees • Increase in number of employees using dispute resolution to seek redress for

	violations as a non-judicial dispute resolution is less damaging for employment relations

	Overall impact on fundamental rights
Confirmation that no fundamental rights will be impinged (e.g. right to operate a business)	• Confirmed: no change to the current situation (REFIT study found no obvious discrepancies between the Directive and the Charter of Fundamental Rights of the EU)
Contribution to equality between men and women	• Significant contribution, as workers not currently covered by the Directive are more likely to be female (<8 hours per week, casual, etc.)
Contribution to freedom to choose an occupation and right to engage in work	• Significant contribution to converting undeclared work and thus individual's right to engage in legal employment
Contribution to right to effective remedy	• Significant increase in number of workers receiving right to information (+ more information + earlier) which is essential to gaining justice • Significant contribution due to more accessible redress mechanisms, increased number of employees with their rights protected, stronger legal basis for complaints, increased court cases due to the stronger position of employees • Increase in number of employees using dispute resolution to seek redress for violations as a non-judicial dispute resolution is less damaging for employment relations
Contribution to solidarity (protection from unfair dismissal, fair and just working conditions, family and professional life)	Significant contribution as: • Additional employees receiving written statement and thus having better understanding of basic working conditions & rights at work; clarity in employment relationship; better protection against possible infringements of rights; better access to social security protection through having proof of employment • 93.9m additional employees having new right to information about social security system into which the employer is contributing • 153.4m additional employees having new right to information about national law applicable in case of termination of contract
Access to justice	• Significant increase in number of workers receiving right to information (+ more information + earlier) which is essential to gaining justice

2. Impacts of policy package C

	Direct benefits and costs
Direct benefits for workers – right to written statement	• No increase in number of workers having right to a written statement • Gradual reduction in the proportion of workers covered by the Directive (number of people in atypical forms of employment is expected to grow at a faster rate than those in standard forms)
Direct benefits for workers – strengthened information package	• 43.9m additional employees having new right to information about duration and conditions of probation periods (of those, 35.6m whose contracts include probation periods) • 91.2m additional employees having new right to information about social security system into which the employer is contributing • 149.3m additional employees having new right to information about

	Direct benefits and costs
	national law applicable in case of termination of contract • 141.4m additional employees having new right to information about working time (including possibility of extra hours) • 4.4m-8.8m additional employees p.a. starting a job and receiving information about duration and conditions of probation periods • 9.1m-18.2m additional employees p.a. starting a job and receiving information about social security system into which the employer is contributing • 14.9m-29.9m additional employees p.a. starting a job and receiving information about national law applicable in case of termination • 14.1m-28.3m additional employees p.a. starting a job and receiving information about precise working time (including possibility of extra hours) • 14.9m-29.9m additional employees p.a. leaving a job having had the right to information about national law applicable in case of termination
Direct benefits for workers – shorter deadline (1 month)	• Increased legal certainty from receiving written statements at an earlier date • 46.7m (25% of EU workforce) additional employees having new right to receive a written statement within 1 month of starting employment • 4.7m-9.3m additional employees p.a. starting a job and having new right to receive a written statement within 1 month of starting employment
Direct benefits for workers – shorter deadline (15 days)	• Increased legal certainty from receiving written statements at an earlier date • 103.1m (55% of EU workforce) additional employees having new right to receive a written statement within 15 days of starting employment • 10.3m-20.6m additional employees p.a. starting a job and having new right to receive a written statement within 15 days of starting employment • 32,000 additional workers with contract duration of less than 1 month benefitting from a deadline of 15 days
Direct benefits for workers – shorter deadline (1st or before)	• Increased legal certainty from receiving written statements at an earlier date • 81.0m (37% of EU workforce) additional employees having new right to receive a written statement on the 1st day of employment or before • 8.1-16.2m additional employees p.a. starting a job and having new right to receive a written statement on the 1st day of employment or before • 52,000 additional workers with contract duration of less than 1 month benefitting from a deadline of 1st day of employment or before • 684,000 workers with contract duration of less than 1 month not benefitting from a deadline of 1st day of employment or before
Direct benefits for workers – new rights for casual workers	• 3.1m-3.8m casual and voucher-based employees (already having the right to a written statement) receiving right to reference hours, minimum advance notice period, minimum number of hours set at the average of the preceding period, freedom from exclusivity clauses
Direct benefits for workers – new rights for all workers	• 52.5m additional employees receiving possibility to request a new form of employment • 31.5m additional employees receiving right to maximum duration of probation
Direct costs for workers	• None
Direct benefits for employers	• Modest additional benefits since many employers already provide such information (either as required by national legislation or through choice) • Increased legal certainty for 16% of employers (i.e. those not currently providing a written statement for all employees due to legal exemptions) • Minimal annual additional revenues to secondary employers due to prohibition of exclusivity clauses

	Direct benefits and costs
Direct costs for employers	• Additional annual cost of providing written statements: €0 • Cost of familiarisation, etc.: €852.5m[308] • Minimal annual reorganisation costs due to unavailability of on-demand/zero-hours staff taking second jobs

Labour market impacts primarily relate to on-demand/zero-hour workers enabled to get a job by prohibition on exclusivity clauses. If the scope of the Directive is not extended (Measure 1), then only those on-demand/zero-hour workers which are already covered by the Directive (due to scope of national legislation) will benefit. Precise data is not available, since such workers are not always defined in national data sets, however, the number will be relatively modest.

	Overall labour market impacts
Change in number of people employed	• Modest number of on-demand/zero-hour contract workers enabled to get a second job with another employer
Change in number of hours worked	• Modest number of extra hours worked per annum by on-demand/zero-hour contract workers enabled to get a second job with another employer
Number of casual workers gaining a second job after prohibition of exclusivity clauses	• Modest number of on-demand/zero-hour contract workers enabled to get a second job with another employer
Increased income of workers	• Slight increase in gross annual earnings of on-demand/zero-hour contract workers enabled to get a second job with another employer
Displacement of workers covered by the Directive by workers not covered	• Minimal adjustments by employers to their workforces

	Overall impact on working conditions
Reduction in undeclared work	• Slight reduction due to reduced deadline for providing written statements • Overall, minimal reduction, as many/most atypical workers will remain outside the scope of the Directive (undeclared work occurs most often in sectors with high prevalence of casual work, e.g. construction, catering, agriculture)
Reduced abuse of workers	• Modest effect as many of the most vulnerable workers will remain outside the scope of the Directive.
Workers having better reconciliation between work and family life	• Modest effect as many of the most vulnerable workers will remain outside the scope of the Directive.
More predicable working hours	• Modest effect as many of the most vulnerable workers will remain outside the scope of the Directive.

[308] This total amount represents the average cost per company (53 EUR for an SME and 39 EUR for a larger company) multiplied by the number of all companies in the EU. It is likely an overestimation as mostly companies needing to issue new written statements will need to invest in familiarising with the new legislation.

	Overall impact on working conditions
through conversion of on-call jobs into minimum hour contracts	
Less abuse of probation periods	• Some reduction in abuse of probation periods, as most workers will have information about the duration and conditions of probation period • 32.4m employees (IE, UK) will continue to have no right to a maximum probation period • 6.8m employees (21% of employees in IE, UK) will continue to have probationary periods with no maximum duration • Continuation of abuses linked to lack of statutory maximum probation period (IE, UK) • 163m employees will continue to have statutory maximum probation period >3 months (AT, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IT, LU, MT, NL, PT, RO, SE, SI SK)
Increased ability of workers to gain redress	• Modest effect as many of the most vulnerable workers will remain outside the scope of the Directive.
Improved conditions of transnational working and greater mobility	• More harmonised information requirements across the EU • Increase in workers written information will help them to move between employers and have their work recognised • Minimal benefit for atypical workers that remain outside the scope of the Directive

	Overall impact on public finances
Increased tax revenues from change in number of hours worked	• Modest effect as many casual workers that are subject to exclusivity clauses will remain outside the scope of the Directive (and thus remain unable to get a second job with another employer).
Reduction in social security from change in employment or hours worked	• Modest effect as many casual workers that are subject to exclusivity clauses will remain outside the scope of the Directive (and thus remain unable to get a second job with another employer). • Increase in legitimate social security claims due to better employee awareness via strengthened information package
Cost of enforcement & support for employers	• No change

	Overall impact on competitiveness and productivity
Significance of administrative costs to overall labour costs	• Increase in compliance and administrative costs is negligible compared to total labour costs • Majority of employers do not find any particular aspect of the current Directive to be particularly burdensome at all
Number or % of employers likely to experience an increase / decrease in competitiveness	• More than 80% of employers will continue to suffer from “unfair competition”, as they already provide written statements for employees working <8 hours per week, employees with contracts of less than one month’s duration, on-demand workers and intermittent workers

	Overall impact on competitiveness and productivity
(taking into account reduction in unfair competition, loss of flexibility, etc.)	
Number or % of employers likely to experience an increase in staff retention, loyalty and productivity plus a reduction in legal costs, court cases, etc.	• Some modest effects as workers receive more information and within a shorter deadline. • Overall, limited, as many atypical workers remain outside the scope of the Directive.

	Overall impact on application and enforcement
Extent to which measures have already been adopted	• Measure 1 (8 hours per week): already adopted in 23 Member States • Measure 1 (<1 month): already adopted in 13 Member States • Measure 2 (information on probation period): already adopted in 21 Member States • Measure 2 (information on social security system): already adopted in 7 Member States • Measure 2 (information on probation period): already adopted in 4 Member States • Measure 2 (information on probation period): already adopted in 9 Member States • Measure 3 (1st day deadline): already adopted in 10 Member States (or shorter) • Measure 3 (before contract formed): already adopted in 7 Member States (or shorter)
Strengthening enforcement and ease of modifying or strengthening means of redress and sanctions	• No increase in number of workers receiving right to information • Many atypical workers not receiving any benefit • For workers already covered, receiving more information + earlier which is essential to gaining justice • For workers already covered, some contribution due to more accessible redress mechanisms, stronger legal basis for complaints, increased court cases due to the stronger position of employees • Slight increase in number of employees using dispute resolution to seek redress for violations as a non-judicial dispute resolution is less damaging for employment relations

	Overall impact on fundamental rights
Confirmation that no fundamental rights will be impinged (e.g. right to operate a business)	• Confirmed: no change to the current situation (REFIT study found no obvious discrepancies between the Directive and the Charter of Fundamental Rights of the EU)
Contribution to equality between men and women	• No significant contribution, as workers remaining outside the scope of the Directive are more likely to be female (<8 hours per week, casual, etc.)
Contribution to freedom to choose an occupation and	• Slight contribution to converting undeclared work and thus individual's right to engage in legal employment

right to engage in work	
Contribution to right to effective remedy	• Some contribution due to more accessible redress mechanisms, stronger legal basis for complaints, increased court cases due to the stronger position of employees • Some increase in number of employees using dispute resolution to seek redress for violations as a non-judicial dispute resolution is less damaging for employment relations
Contribution to solidarity (protection from unfair dismissal, fair and just working conditions, family and professional life)	• Some contribution as employees already covered will have better understanding of basic working conditions & rights at work; clarity in employment relationship; better protection against possible infringements of rights; better access to social security protection through having proof of employment
Access to justice	• Slight contribution as workers already covered will be better informed.

3. Impacts of policy package D

	Direct benefits and costs
Direct benefits for workers – right to written statement	• 2.0m employees working <8 hours per week having the right to a written statement • 108,000 increase in number of employees working <8 hours per week having the right to a written statement • 1.6m employees with contract duration of <1 month having the right to a written statement • 664,000 increase in number of employees with contract duration of <1 month having the right to a written statement • Workers having the right to a written statement due to new definition of employee • Employees having: better understanding of basic working conditions & rights at work; clarity in employment relationship; better protection against possible infringements of rights; better access to social security protection through having proof of employment • Better integration of casual, part-time, fixed-term and other atypical workers in other countries due to provision of written statements
Direct benefits for workers – strengthened information package	• 46.3m additional employees having new right to information about duration and conditions of probation periods (of those, 37m whose contracts include probation periods) • 93.9m additional employees having new right to information about social security system into which the employer is contributing • 153.4m additional employees having new right to information about national law applicable in case of termination of contract • 145.2m additional employees having new right to information about working time (including possibility of extra hours) • 4.6m-9.3m additional employees p.a. starting a job and receiving information about duration and conditions of probation periods • 15.3m-30.7m additional employees p.a. leaving a job having received information about national law applicable in case of termination
Direct benefits for workers – shorter deadline (1st or before)	• Increased legal certainty from receiving written statements at an earlier date • 81.0m (37% of EU workforce) additional employees having new right to receive a written statement on the 1st day of employment or before • 8.1-16.2m additional employees p.a. starting a job and having new right to receive a written statement on the 1st day of employment or before

	Direct benefits and costs
	• 696,000 additional workers with contract duration of less than 1 month benefitting from a deadline of 1st day of employment or before
Direct benefits for workers – new rights for casual workers	• Between 4.3m and 5.7m additional casual and voucher-based workers receiving right to reference hours • Between 5.2m and 6.7m additional casual and voucher-based workers receiving right to minimum advance notice period • Between 4.3m and 5.4m additional casual workers receiving right to minimum number of hours set at the average of the preceding period • Between 5.7m and 7.1m additional casual workers receiving right to freedom from exclusivity clauses
Direct benefits for workers – new rights for all workers	• 55m additional employees receiving possibility to request a new form of employment • 14m fixed-term workers might make use of the possibility to request a new form of employment • 31.5m additional employees receiving right to maximum duration of probation
Direct costs for workers	• None
Direct benefits for employers	• Modest additional benefits since many employers already provide such information (either as required by national legislation or through choice) • Increased legal certainty for 16% of employers (i.e. those not currently providing a written statement for all employees due to legal exemptions) • **€42m-€167m annual additional revenues to secondary employers due to prohibition of exclusivity clauses**
Direct costs for employers	• One-off cost of providing written statements for existing staff that are newly covered by an extension of the Directive: €114m-€152m • Additional annual cost of providing written statements (assuming 10% staff turnover: €11.4m-15.2m • Additional annual cost of providing written statements (assuming 20% staff turnover: 22.7m-30.3m • Total cost of providing written statements in first year: €125.4m-182.3m • Cost of familiarisation, etc.: €852.5m[309] • **€7m-€27m annual reorganisation costs due to unavailability of on-demand/zero-hours staff taking second jobs** • **Total compliance costs policy package D: €1944.5 - €1987.2m**

	Overall labour market impacts
Change in number of people employed	• 91,000 – 364,000 on-demand/zero-hour contract workers enabled to get a second job with another employer
Change in number of hours worked	• 33m-133m extra hours worked per annum by on-demand/zero-hour contract workers enabled to get a second job with another employer
Number of casual workers gaining a second job after prohibition of exclusivity clauses	• 91,000 – 364,000 on-demand/zero-hour contract workers enabled to get a second job with another employer
Increased income of workers	• €355m-€1,424m increase in gross annual earnings of on-demand/zero-

[309] This total amount represents the average cost per company (53 EUR for an SME and 39 EUR for a larger company) multiplied by the number of all companies in the EU. It is likely an overestimation as mostly companies needing to issue new written statements will need to invest in familiarising with the new legislation.

	hour contract workers enabled to get a second job with another employer
Displacement of workers covered by the Directive by workers not covered	• Extent of adjustments by employers to their workforces are uncertain but might be modest • No overall pattern discernible: the majority will not adjust their workforces. Of those employing casual workers, a sizeable proportion will make no change. Some (likely to be <50%) may replace casual contracts with standard forms of employment. A smaller proportion may simply recruit fewer casual workers. A yet smaller proportion might replace casual work contracts with informal agreements or self-employment arrangements.

	Overall impact on working conditions
Reduction in undeclared work	• Considerable reduction in undeclared work, as absence of a written statement in an employment relationship is often indicative of undeclared work • Reduction in "unwitting" undeclared work by employees not receiving a written statement • Reduction due to reduced deadline for providing written statements (in part because fewer temporary workers will complete their contract before receiving a written statement) • Increase ease of detection of undeclared work (provision of information on the employment relationship and the declaration of the relationship to the relevant authorities typically occur at the same time) • Undeclared work occurs most often in sectors with high prevalence of casual work (e.g. construction, catering, agriculture) – bringing casual workers into the scope of the Directive will expose undeclared work and facilitate detection
Reduced abuse of workers	• Increase in number of workers receiving written statement will reduce abuse, as written statements facilitate the control of other working conditions by the relevant body e.g. labour inspectorates • Increase in number of workers having new right to written statement and thus information about collective agreements governing the employee's conditions of work
Workers having better reconciliation between work and family life	• Increase in number of workers having new right to written statement and thus information about amount of paid leave and normal working day • 45.2m additional employees having new right to information about working time will reduce involuntary/inadvertent overtime • Casual workers benefitting from reference hours and minimum advance notice period
More predicable working hours through conversion of on-call jobs into minimum hour contracts	• Casual workers benefitting from reference hours and minimum advance notice period
Less abuse of probation periods	• Reduction in abuse of probation periods, as all workers (except small number not covered by a revised Directive) will have information about the duration and conditions of probation period • 32.4m employees (IE, UK) will continue to have no right to a maximum probation period • 6.8m employees (21% of employees in IE, UK) will continue to have probationary periods with no maximum duration • Continuation of abuses linked to lack of statutory maximum probation period (IE, UK) • 163m employees will continue to have statutory maximum probation period >3 months (AT, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IT, LU, MT, NL, PT, RO, SE, SI SK)

	Overall impact on working conditions
Increased ability of workers to gain redress	• Right to a written statement reinforces cases brought related to infringements of other rights
Improved conditions of transnational working and greater mobility	• More harmonised information requirements across the EU • Increase in workers written information will help them to move between employers and have their work recognised • More employees receiving essential information about conditions pertaining to any periods of work abroad

	Overall impact on public finances
Increased tax revenues from change in number of hours worked	• **€46m-€185m annual additional tax revenues from on-demand/zero-hour contract workers taking a second job due to prohibition of exclusivity clauses**
Reduction in social security from change in employment or hours worked	• **Reduction in social security payments resulting from 33m-133m extra hours worked per annum by on-demand/zero-hour contract workers enabled to get a second job with another employer** • Reduction in fraudulent social security claims linked to bogus self-employment or undeclared work • Increase in legitimate social security claims due to better employee awareness
Cost of enforcement & support for employers	• Increased costs of enforcement due to higher number of workers covered

	Overall impact on competitiveness and productivity
Significance of administrative costs to overall labour costs	• Increase in compliance and administrative costs is negligible compared to total labour costs • Majority of employers who replied to the survey do not find any particular aspect of the current Directive to be particularly burdensome
Number or % of employers likely to experience an increase / decrease in competitiveness (taking into account reduction in unfair competition, loss of flexibility, etc.)	• More than 80% of employers are likely to benefit from less "unfair competition", as they already provide written statements for employees working <8 hours per week, employees with contracts of less than one month's duration, on-demand workers and intermittent workers • **Secondary employers having access to 91,000 – 364,000 workers for 33m-133m hours per annum** • **Of those not yet providing basic rights for casual workers, the majority of employers anticipate incurring increased indirect compliance costs from the provision of such rights – although mostly to a modest rather than to a great extent (legal advice, revised scheduling systems, HR manager time, staff training, informing staff)**
Number or % of employers likely to experience an increase in staff retention, loyalty and productivity plus a reduction in legal costs, court cases, etc.	• Around 20% of employers who do not currently provide written statements will benefit (the current Directive has been found to increase staff retention, loyalty and productivity plus a reduction in legal costs, court cases, etc. (REFIT)) • **More employers anticipate gaining than not gaining benefits from the provision of new basic rights for casual workers: higher staff retention/loyalty, improved productivity, improved worker relations, fewer complaints from workers, fewer court cases related to working conditions, lower training costs, lower other costs, better resource planning & work allocation.**

	Overall impact on application and enforcement

Extent to which measures have already been adopted	• Measure 1 (8 hours per week): already adopted in 23 Member States • Measure 1 (<1 month): already adopted in 13 Member States • Measure 2 (information on probation period): already adopted in 21 Member States • Measure 2 (information on social security system): already adopted in 7 Member States • Measure 2 (information on probation period): already adopted in 4 Member States • Measure 2 (information on probation period): already adopted in 9 Member States • Measure 3 (1st day deadline): already adopted in 10 Member States (or shorter) • Measure 3 (before contract formed): already adopted in 7 Member States (or shorter)
Strengthening enforcement and ease of modifying or strengthening means of redress and sanctions	• Significant increase in number of workers receiving right to information (+ more information + earlier) which is essential to gaining justice • Significant contribution due to more accessible redress mechanisms, increased number of employees with their rights protected, stronger legal basis for complaints, increased court cases due to the stronger position of employees • Increase in number of employees using dispute resolution to seek redress for violations as a non-judicial dispute resolution is less damaging for employment relations

	Overall impact on fundamental rights
Confirmation that no fundamental rights will be impinged (e.g. right to operate a business)	• Confirmed: no change to the current situation (REFIT study found no obvious discrepancies between the Directive and the Charter of Fundamental Rights of the EU)
Contribution to equality between men and women	• Significant contribution, as workers not currently covered by the Directive are more likely to be female (<8 hours per week, casual, etc.)
Contribution to freedom to choose an occupation and right to engage in work	• Significant contribution to converting undeclared work and thus individual's right to engage in legal employment • **Substantial contribution for on-demand/zero-hour contract workers currently prevented from taking a second job by exclusivity clauses**
Contribution to right to effective remedy	• Significant increase in number of workers receiving right to information (+ more information + earlier) which is essential to gaining justice • Significant contribution due to more accessible redress mechanisms, increased number of employees with their rights protected, stronger legal basis for complaints, increased court cases due to the stronger position of employees • Increase in number of employees using dispute resolution to seek redress for violations as a non-judicial dispute resolution is less damaging for employment relations
Contribution to solidarity (protection from unfair dismissal, fair and just working conditions, family and professional life)	Significant contribution as: • Additional employees receiving written statement and thus having better understanding of basic working conditions & rights at work; clarity in employment relationship; better protection against possible infringements of rights; better access to social security protection through having proof of employment • 93.9m additional employees having new right to information about social security system into which the employer is contributing • 153.4m additional employees having new right to information about national law applicable in case of termination of contract
Access to justice	• Significant increase in number of workers receiving right to information (+ more information + earlier) which is essential to gaining justice

4. Impacts of extending the coverage of the Directive to domestic workers

The Written Statement Directive does not specifically exclude domestic workers from its application. However, the question whether domestic workers are covered by the Directive or not often depends on whether the contract or employment relationship is defined by national law. For that reason, it is not possible to simply state whether Member State law has extended the Directive to all domestic workers or not.

Many domestic workers operate under the terms of an informal or verbal agreement rather than a contract or employment relationship defined by national law. Such work can also be undeclared. **In these cases, the worker would not be covered by the Directive.**

Some domestic workers are employed under a contract or employment relationship defined by national law. However, these might be a minority. **In these cases, the worker would be covered by the Directive**. In some Member States, the labour law makes specific reference to domestic workers. Some examples are provided in the box below.

Based on their level of coverage of domestic workers the EU MS can be grouped as follows:

Categorisation of Member States regarding domestic workers

Domestic workers covered?	Yes (16)	Possibly (9)	No (3)
Countries	AT, BE, CY, FI, FR, DE, EL, IT, LV, LT, LU, MT, PT, RO, ES, UK	BG, HR, CZ, DK, EE, IE, PL, SK, SL	HU, NL, SE

Source: Own CSES and PPMI research

The table shows that in 15 Member States, domestic workers are covered by the Directive and are entitled to receive a written statement. In 9 Member States, their right to a written statement depends on their employment relationship. Only in Hungary, the Netherlands and Sweden, domestic workers are excluded from the scope of the Directive.

The extent to which domestic workers will benefit from any revision of the Directive will depend on two things: i) the extent to which such workers are recognised in law as workers or employees; and ii) the extent to which employers comply with any legal requirement to provide a written statement – this latter point will depend on the ease with which private households are able to comply.

Regarding the first point, previous research by the ILO has found that some countries have already enacted specific laws or regulations dealing with domestic work, e.g. Austria, Denmark, Finland, Hungary, Italy, Malta, Portugal, Spain, Sweden.[310] Other countries have devoted specific chapters, titles or sections in labour codes, employment acts or acts respecting contracts of employment, e.g. Belgium. Some countries have enacted national collective agreements in addition to the Labour Code, e.g. France. However, the ILO research found that only a few of those countries specifically required the provision of a written contract of employment, e.g. Austria, Finland, France.[311] In some countries, most domestic workers are covered by the legislation transposing the Directive into national law, e.g. Poland, Romania.

Where domestic workers are defined as workers or employees, they have the right to a written statement, unless excluded for other reasons (e.g. if the employment relationship has a duration of less than one month or involves a working week not exceeding eight hours, and these exclusions have been transposed into the national legislation). For example:

- Sweden: since 2008 the Working Environment Act has applied to work carried out in private households, bringing domestic work within the competence of the Working Environment Authority. There is currently a proposal (Ds 2017:10) to bring the treatment of domestic workers up to the standards of the ILO Convention.
- France: salaried domestic workers must have a written employment contract that specifies their function, remuneration and working hours.
- Portugal: domestic workers are governed by specific legislation - Decree-Law 235/92, 24 October. The Domestic contract is a labour contract similar to the Labour Code employment contract.
- Poland: no groups of workers are excluded from information obligations related to transposition of the Directive in the Polish Labour Code. Any person who has the status of an employee/worker according to Article 2 Labour Code irrespective of the type of work he/she performed (including domestic workers, notwithstanding the working time system or the working time (flexible working time), the number of hours worked in the week (< 8 hours) or the number of working days a month (< less than one month), is covered by protection resulting from the obligation to inform them of their working conditions.

In those Member States that have defined domestic workers as employees, brought such workers within the scope of labour codes or otherwise extended the scope of the Directive to such workers, the extent to which domestic workers benefit will depend on the level of compliance by employers. In some countries, such as Austria and Sweden, it

[310] ILO (2003), Domestic work, conditions of work and employment: A legal perspective

[311] The ILO research only covered 10 EU Member States: Belgium, Denmark, Finland, France, Hungary, Italy, Malta, Portugal, Spain, and Sweden.

was reported that compliance is generally high. For example, in Sweden, a recent survey found that 87% of employers in Sweden (all employers, not only private households) would provide the relevant information, even where there are no minimum requirements established in law.

However, the evidence suggests that in some Member States, the level of compliance can be particularly low in respect of domestic workers. The main reasons offered for the low level of compliance in Romania were reported to be the wish to avoid the fiscal and administrative burden associated with formal employment and to retain the flexibility to terminate the employment relationship as and when the employer wishes. For example, in Romania, it was reported that most domestic work is not generally declared and therefore no written statement is provided for around 70% of domestic workers (14,000 out of 20,000).

It was also reported that domestic workers typically find it difficult to gain redress if they do not receive a written statement or if other rights are infringed. For example, an employee representative in Italy interviewed in the framework of the study reported domestic workers find it more difficult to redress compared to workers in standard contract and that domestic workers or workers in very small businesses find it particularly challenging to bring employers to court.

Generally, it is very rare that employees take legal action, solely on the basis of non-provision of a written statement. However, where domestic workers bring legal cases for other reasons (e.g. exploitative working conditions) the lack of a written statement can support their case.

Regarding the feasibility of private households complying, the following considerations are relevant:

First, by definition, the monetised cost of compliance would generally be zero, assuming that the private householder is providing the statement during his/her personal rather than professional time.

Second, a private householder would probably require at least as much time as an SME to familiarise himself/herself with the requirements of the Directive and perhaps more, given the likelihood that he/she will often not have specific legal or human resource expertise. The estimated time is around 90 minutes for an SME. At the same time, the householder would probably not have to transfer the information individually to multiple persons (as might be the case in a firm), which will limit the time required.

Third, it is reasonable to assume that a private household would probably require at least as much time as an SME to provide the written statement (and perhaps more, given the likelihood that the household will not have the relevant professional expertise). The REFIT study found that SMEs take 15-30 minutes to provide the written statement (per

contract/work relationship). A conservative estimate would therefore be that a private household would require at least 30 minutes per statement.

Fourth, private households would particularly benefit from provision of templates by Member States. The REFIT review found that templates for a written contract or written statement are already available in over half of Member States, typically provided by the Ministry of Labour or a labour inspectorate.[312] Such templates are most effective at national level, given the different national traditions of collective bargaining, different approaches to the regulation of working time, etc. Rates of compliance would probably be increased by i) the provision of national templates specifically for private households employing domestic workers and by ii) specific advice for private households provided by the relevant advisory bodies.

Fifth, the REFIT study found little evidence to suggest that a disproportionate burden was being placed on micro-enterprises (<10 employees) and that there was virtually no appetite for exemptions for micro-enterprises. Of course, private households are different from micro-enterprises, but this does support the argument that limited legal or human resource expertise is not necessarily a barrier to compliance.

Lastly, domestic workers who provide services through the use of vouchers would be a special case, with their circumstances depending on the details of the relevant national scheme. For example, voucher workers in Belgium are employed by an intermediary organisation and therefore already have certain rights to receive information. In other cases, voucher-based systems often relate to an "intermediary" form of employment and it can be unclear if an employment relationship exists between the client and the worker – particularly, if work is provided only one a one-off rather than recurring basis.

[312] Such templates were *not* available in 13 MS: BE, BG, CZ, DE, DK, HR, HU, IT, NL, PT, SE, SI, and SK.

ANNEX 10: COHERENCE

1. Coherence with EU labour law

Each policy option has been tested for coherence with EU policy objectives, including the Charter for fundamental rights, and the existing legal framework, in particular concerning EU labour law: EU Directives on fixed-term work, part-time work, temporary agency work, working time, sectoral working conditions, posting of workers, gender equality and anti-discrimination, and other initiatives in the field (e.g. proposal for a Directive on Work-Life Balance).

All policy options apart from Baseline include measures 2, 3, 5.

All policy options apart from Baseline include measures 2, 3, 5 that present new provisions to improve coherence with the social acquis and other policy initiatives. This allows considering packages B, C and D as ensuring better coherence than the baseline option:

- Coherence with posting of workers provisions has been enhanced as suggested by the REFIT evaluation.
- Coherence with Temporary Agency Work Directive has been enhanced (see enhanced scope and rules to allow more legal persons to perform employer-like duties) as suggested by the REFIT evaluation.
- Due to the role of written statements as tool to detect undeclared work, as found in the REFIT study, the change in the timeliness of the provision, the enhanced scope covering jobs at high risk of undeclared work, the additional information to be provided and the enhanced enforcement rules increase the coherence with the action on undeclared work.
- Moreover, the goal of supporting action on undeclared work is also pursued by establishing the criteria for supporting assessment of the existence of an employment relationship for the scope of the Directive. This should support combating fraudulent contracting and bogus self-employment.
- Coherence with the equal treatment acquis covering discrimination in the workplace has been improved introducing consistent provisions on enforcement.

Other instruments of EU labour law have a broader personal scope than the current Directive. Either they apply to ‘workers’ (e.g. Working Time Directive) or they have been interpreted as having a scope going beyond national limitations to workers (e.g. Temporary Agency Work). The exclusion criteria are also different across the spectrum. Moreover, the REFIT evaluation found that the discrepancy between the aim of the Directive stated in the preamble covering ‘every employee’ and the material scope of the

current Directive allowing for more than limited exclusions is an obstacle to internal coherence.

Policy package B and D would therefore increase the coherence of the personal scope of EU labour law. This would avoid allowing a new instrument to provide for a personal scope more detrimental to equal treatment than other existing ones. This enhances coherence with the Working Time Directive and the Part-Time, Fixed-Term and Temporary Agency Work Directive, allowing for the current exclusions to remain would give rise for incoherence.

The provision of additional material rights is present in options C and D and absent from A and B. These additional rights also support the goals of the Working Time Directive, Fixed-Term Directive, Part-Time Directive and Temporary Agency Directive. Indeed:

- Proposals to support predictability of working schedules support the achievement of an organisation of working time protective of safety and health of workers, as in the Working Time Directive.
- The elimination of the exclusion criteria for workers working less than 8 hours per week supports the achievement of the aims of the Part-Time work Directive.
- Additionally, the Part-Time Work Directive aims at supporting part-time on a voluntary basis only: provisions on the possibility to request and receive a reply in writing, or on the assessment of working hours at a preceding average should support this aim by decreasing involuntary part-time.
- The elimination of the exclusion criteria for workers in contracts of less than one month supports the achievement of the aims of the Fixed-Term Work Directive.
- The Fixed-Term Work Directive and the Part-Time Work Directive are aimed at improving the quality of specific forms of work by preventing non-discrimination, and establishing a framework to prevent abuse (clause 5 FTD) and to ensure the development of contractual form taking into account the needs of employers and workers (clause 1 PTD). The protection of non-standard workers, the improvement of the quality of their work are also the aims of the Temporary Agency Work Directive (Art. 2). The new rights proposed support the same goal, for the same categories of workers and beyond for other forms of non-standard work (e.g. casual workers).

Furthermore, the possibility to request another form of employment relationship reproduces similar provisions existing in the Parental Leave Directive and in the Proposal for a Directive on Work-Life Balance, strengthening similar aims in the Fixed-Term Work, Part-Time Work and Temporary Agency Directives.

The Parental Leave Directive already provides for the possibility to ask for two types of flexible working arrangements (working patterns and working hours) for parents returning from parental leave. The proposal for a Directive on Work-Life Balance for

parents and carers introduces a proposed right, for workers with children up to at least 12 years old, to request flexible working arrangements for caring purposes; employers would have then a duty to consider and respond to requests for flexible working arrangements, taking into account the needs of both employers and workers, and justify any refusal of such a request. Employers would also have the obligation to consider and respond to requests to return to the original working pattern. Under the Part-Time Work Directive, employers should give consideration, as far as possible, to (a) requests by workers to transfer from full-time to part-time work that becomes available in the establishment, (b) requests by workers to transfer from part-time to full-time work or to increase their working time should the opportunity arise; (c) the provision of timely information on the availability of part-time and full-time positions in the establishment in order to facilitate transfers from full-time to part-time or vice versa. The Fixed Term Work Directive provides that employers shall inform fixed-term workers about vacancies which become available in the undertaking or establishment to ensure that they have the same opportunity to secure permanent positions as other workers. Such information may be provided by way of a general announcement at a suitable place in the undertaking or establishment. Member States have transposed those provisions in their national legislation but few have implemented any more favourable measures such as obliging the employer to provide a reasoned reply to this request or granting a priority for part-time workers to access available full time positions in the undertakings.

2. Coherence with Principles of the European Pillar of Social Rights

Pillar Principle	***Relevant text***	***Proposal***
1. Education, training and life-long learning	Everyone has the right to quality and inclusive education, training and life-long learning in order to maintain and acquire skills that enable them to participate fully in society and manage successfully transitions in the labour market.	New right on cost-free mandatory training (measure 4) Information on training (measure 2)
2. Gender equality	Equality of treatment and opportunities between women and men must be ensured and fostered in all areas, including regarding participation in the labour market, terms and conditions of employment and career progression. Women and men have the right to equal pay for work of equal value.	Proposal overall will contribute
3. Equal opportunities	Regardless of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation, everyone has the right to equal treatment and	Proposal overall will contribute

	opportunities regarding employment, social protection, education, and access to goods and services available to the public. Equal opportunities of under-represented groups shall be fostered.	
4. Active support to employment	Everyone has the right to timely and tailor-made assistance to improve employment or self-employment prospects. This includes the right to receive support for job search, training and re-qualification. Everyone has the right to transfer social protection and training entitlements during professional transitions.	Right to cost-free mandatory training (measure 4), information on training (measure 2)
5. Secure and adaptable employment	Regardless of the type and duration of the employment relationship, …	Changes in scope (measure 1)
	…workers have the right to fair and equal treatment regarding working conditions …and training…	Proposal overall, specifically new rights (measure 4) combined with 1 scope
	The transition towards open-ended forms of employment shall be fostered.	Proposal overall, specifically New rights (measure 4): Possibility to request another form of work and receive a reply in writing, combined with 1 scope.
	…the necessary flexibility for employers to adapt swiftly to changes in the economic context shall be ensured. Innovative forms of work that ensure quality working conditions shall be fostered. Entrepreneurship and self-employment shall be encouraged.	Proposal overall
	Employment relationships that lead to precarious working conditions shall be prevented, including by prohibiting abuse of atypical contracts.	Proposal overall, specifically new rights (measure 4), specifically limitation of exclusivity clauses, combined with 1 scope.
	Any probation period should be of reasonable duration	Measure 4, limitation of probation
6. Wages	Workers have the right to fair wages that provide for a decent standard of living.	Proposal overall, specifically new rights (measure 4) allowing for

	… In-work poverty shall be prevented.	additional employment, limitation of exclusivity clauses, reference hours combined with 1 scope.
7. Information about employment conditions and protection in case of dismissals	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 on probation period.	Proposal overall, specifically Measures 2 and 3 on time and content of written statement including probation combined with 1 scope.
	Prior to any dismissal, workers have the right to be informed of the reasons and be granted a reasonable period of notice. They have the right to access to effective and impartial dispute resolution and, in case of unjustified dismissal, a right to redress, including adequate compensation.	Measure 5 combined with 1 scope.
8. Social dialogue and involvement of workers	The social partners shall be consulted on the design and implementation of economic, employment and social policies according to national practices. They shall be encouraged to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action. Where appropriate, agreements concluded between the social partners shall be implemented at the level of the Union and its Member States. Workers or their representatives have the right to be informed and consulted in good time on matters relevant to them, in particular on the transfer, restructuring and merger of undertakings and on collective redundancies. Support for increased capacity of social partners to promote social dialogue shall be encouraged.	Proposal takes into consideration contributions from 2 stages of consultation + derogations for collective bargaining
9. Work-life balance	Parents and people with caring responsibilities have the right to suitable leave, flexible working arrangements and access to care services. Women and men shall have equal access to special leaves of absence in order to fulfil their caring responsibilities and be	Measure 4 combined with measure 1 scope – particularly rights to predictability

	encouraged to use them in a balanced way.	
10. Healthy, safe and well-adapted work environment and data protection	Workers have the right to a high level of protection of their health and safety at work. Workers have the right to a working environment adapted to their professional needs and which enables them to prolong their participation in the labour market. Workers have the right to have their personal data protected in the employment context.	Measure 4 specifically reference hours
11 to 20 -Chapter III: Social protection and inclusion		Information on social security in renewed information package measure 2, combined with 1 scope