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From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY
OF THE 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

Delegations will find attached document SWD(2017) 479 final.

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Brussels, 21.12.2017
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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE 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) 478 final}

Executive Summary Sheet
Impact Assessment on Proposal for a Directive on Transparent and Predictable Working Conditions in the European Union
A. Need for action
Why? What is the problem being addressed?
<p>The problem relates to the risk of insufficient protection for workers, including those in new and non-standard forms of employment, in the context of the necessary labour market adaptability. A REFIT evaluation¹ and a public consultation on the European Pillar of Social Rights² revealed that: (1) some workers do not receive a written statement; (2) the information provided by employers may be insufficient and/or provided too late; (3) strengthened enforcement could help implementation; (4) an increased lack of predictability; (5) insufficient access to mandatory training; (6) varying levels of protection among Member States, coupled with less transparency on the labour market.</p>
What is this initiative expected to achieve?
<p>The overall aim is to promote more secure and predictable employment while ensuring labour market adaptability. The initiative aims to improve: (1) information on working conditions; (2) working conditions for all workers, notably in non-standard forms of employment, while leaving scope for labour market adaptability; (3) compliance with working conditions standards; and (4) labour market transparency while avoiding excessive burdens on business.</p>
What is the value added of action at the EU level?
<p>The multiplication of forms of work requires additional minimum standards to support equal treatment of workers, a level playing field across the EU, and upward convergence in employment and social outcomes. Given labour market developments since 1991, the Directive is no longer fully adequate. The changes to the Directive needed to rectify these shortcomings can only be made at EU level.</p>

¹ REFIT Evaluation of 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>

² SWD(2017)206 Report of the public consultation Accompanying the document Establishing a European Pillar of Social Rights

B. Solutions
<p>What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?</p> <p>The following measures have been considered: (1) A broader scope of application to cover all EU workers; (2) The right to fuller and updated information; (3) Shortening the deadline to the first day of employment or before; (4) New minimum rights for all workers; (5) Strengthened enforcement..</p> <p>The new rights (measure 4) are:</p> <ul style="list-style-type: none"> • Right to greater predictability for workers whose work schedule is mostly variable: (i) Right to predefined reference days and hours (ii) Right to a reasonable advance notice before a new assignment • Right to employment in parallel (ban on exclusivity clauses) • Right to request another form of employment and receive a written reply • Right to a maximum duration of probation period • Right to cost-free training as required in EU legislation, national legislation or collective agreements. <p>The preferred option is a combination of all the above measures, as most suited to achieve the policy objectives.</p>
<p>Who supports which option?</p> <p>The preferred option is most closely aligned with the European Pillar of Social Rights proclaimed by the Council, the European Parliament and the Commission.</p> <p>It is the closest to the requests of the Parliament and the workers' organisations during the consultation process under Article 154 TFEU.³ To address concerns of employers, the Commission discarded some avenues of action proposed in the first stage consultation and did not pursue certain proposals of the workers' organisations. The preferred option balances the essential protection for workers with the adaptability for job creation and labour market innovation.</p>
C. Impacts of the preferred option
<p>What are the benefits of the preferred option (if any, otherwise main ones)?</p> <p>A substantial improvement in working and living conditions is expected. At least 2-3 million non-standard workers will come under the scope of the Directive. 8-16 million will start a new job with clear information on rights and obligations. Better predictability for some 4-7 million workers should improve their work-life balance and health. Some 14 million workers might request a new form of work. Without exclusivity clauses some 91,000-364,000 on-demand workers may seek additional work and earn 355-1,424 million EUR per year extra. Workers' right to receive cost-free mandatory training would be confirmed and they would have easier access to means of redress. Employers would benefit</p>

³ The Commission took note of the Parliament's call for establishing a new framework directive on decent working conditions but considered that at this stage a more proportionate approach lies in a more targeted instrument, taking into account the existing legal basis, the diverging views of the social partners and the obligation in Article 153(2) TFEU.

thanks to more sustainable competition, increased legal certainty and an overall improvement in transparency on the labour markets. Without exclusivity clauses, workers will be available to work for other employers, which might generate some 42-167 million EUR annual revenues for those employers. Non-quantified benefits for employers include higher employee retention and loyalty, healthier working relations, fewer complaints and court cases and better resource planning, all of which will contribute to an overall increase in productivity.

What are the costs of the preferred option (if any, otherwise main ones)?

No significant costs for workers. For employers: the 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 one-off costs related to familiarisation with the new Directive: an average of 53 EUR for an SME and 39 EUR for a larger company. Costs of responding to requests for a new form of employment are expected to be similar to those deriving from issuing a new written statement. Employers anticipate some modest indirect costs (legal advice, revised scheduling systems, HR management time, information for staff etc.). Flexibility will only be lost at the margin (i.e. for the small proportion of employers making extensive use of the most flexible forms of employment). No significant aggregate impacts on wages are expected, though individuals would gain the capacity to earn more through reduced underemployment and more predictable working conditions.

How will businesses, SMEs and micro-enterprises be affected?

SMEs will likely spend somewhat more per written statement and might have higher familiarisation costs. The overall impact of the measures will however depend on a company's business model rather than size (e.g. extent of reliance on non-standard work). Templates could allow for savings (30-40% per written statement provided) and particularly facilitate compliance in SMEs. A lighter regime for SMEs in case of requests for a new form of employment is expected to diminish the cost for SMEs.

Will there be significant impacts on national budgets and administrations?

Modest costs for the adaptation of Member States' legal frameworks. Some costs related to enhanced enforcement. Overall, a reduction in undeclared work can be expected as the proposed measures facilitate inspection and enforcement. Additional tax revenues and savings on social security payments can be expected: tax revenues related to the prohibition of exclusivity clauses: 46-185 million EUR per year; undeclared work moved to formal economy: 8-25 million EUR per year in tax revenues; 4-24 million EUR per year in reduced social security payments.

Will there be other significant impacts?

A more uniform scope of application and clearer information on working conditions will support mobility both within the national labour markets and across the EU. A reduction in undeclared work can be expected. A significant contribution to fundamental rights can be expected notably concerning the freedom to choose an occupation and the right to engage in work, equality between men and women, and the right to effective remedy and access to justice.

D. Follow up
When will the policy be reviewed?
The Commission will monitor implementation in the Member States and review the Directive in consultation with the Member States and social partners at EU level, ensuring a sufficiently long period to evaluate the effects of the initiative after it has been fully implemented.