

COUNCIL DIRECTIVE of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (91/533/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the development, in the Member States, of new forms of work has led to an increase in the number of types of employment relationship;

Whereas, faced with this development, certain Member States have considered it necessary to subject employment relationships to formal requirements; whereas these provisions are designed to provide employees with improved protection against possible infringements of their rights and to create greater transparency on the labour market;

Whereas the relevant legislation of the Member States differs considerably on such fundamental points as the requirement to inform employees in writing of the main terms of the contract or employment relationship;

Whereas differences in the legislation of Member States may have a direct effect on the operation of the common market;

Whereas Article 117 of the Treaty provides for the Member States to agree upon the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained;

Whereas point 9 of the Community Charter of Fundamental Social Rights for Workers, adopted at the Strasbourg European Council on 9 December 1989 by the Heads of State and Government of 11 Member States, states:

'The conditions of employment of every worker of the European Community shall be stipulated in laws, a collective agreement or a contract of employment, according to arrangements applying in each country.';

Whereas it is necessary to establish at Community level the general requirement that every employee must be provided with a document containing information on the essential elements of his contract or employment relationship;

Whereas, in view of the need to maintain a certain degree of flexibility in employment relationships, Member States should be able to exclude certain limited cases of employment relationship from this Directive's scope of application;

Whereas the obligation to provide information may be met by means of a written contract, a letter of appointment or one or more other documents or, if they are lacking, a written statement signed by the employer;

Whereas, in the case of expatriation of the employee, the latter must, in addition to the main terms of his contract or employment relationship, be supplied with relevant information connected with his secondment;

Whereas, in order to protect the interests of employees with regard to obtaining a document, any change in the main terms of the contract or employment relationship must be communicated to them in writing;

Whereas it is necessary for Member States to guarantee that employees can claim the rights conferred on them by this Directive;

Whereas Member States are to adopt the laws, regulations and legislative provisions necessary to comply with this Directive or are to ensure that both sides of industry set up the necessary provisions by agreement, with Member States being obliged to take the necessary steps enabling them at all times to guarantee the results imposed by this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Scope 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.

Article 2

Obligation to provide information 1. An employer shall be obliged to notify an employee to whom this Directive applies, hereinafter referred to as 'the employee', of the essential aspects of the contract or employment relationship.

2. The information referred to in paragraph 1 shall cover at least the following:

- (a) the identities of the parties;
- (b) the place of work; where there is no fixed or main place of work, the principle that the employee is employed at various places and the registered place of business or, where appropriate, the domicile of the employer;
- (c) (i) the title, grade, nature or category of the work for which the employee is employed; or
- (ii) a brief specification or description of the work;
- (d) the date of commencement of the contract or employment relationship;
- (e) in the case of a temporary contract or employment relationship, the expected duration thereof;
- (f) the amount of paid leave to which the employee is entitled or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;
- (g) the length of the periods of notice to be observed by the employer and the employee should their contract or employment relationship be terminated or, where this cannot be indicated when the information is given, the method for determining such periods of notice;
- (h) the initial basic amount, the other component elements and the frequency of payment of the remuneration to which the employee is entitled;
- (i) the length of the employee's normal working day or week;
- (j) where appropriate;
- (i) the collective agreements governing the employee's conditions of work;

or

(ii) in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of the competent body or joint institution within which the agreements were concluded.

3. The information referred to in paragraph 2 (f), (g), (h) and (i) may, where appropriate, be given in the form of a reference to the laws, regulations and administrative or statutory provisions or collective agreements governing those particular points.

Article 3

Means of information 1. The information referred to in Article 2 (2) may be given to the employee, not later than two months after the commencement of employment, in the form of:

- (a) a written contract of employment; and/or
- (b) a letter of engagement; and/or
- (c) one or more other written documents, where one of these documents contains at least all the information referred to in Article 2 (2) (a), (b), (c), (d), (h) and (i).

2. Where none of the documents referred to in paragraph 1 is handed over to the employee within the prescribed period, the employer shall be obliged to give the employee, not later than two months

after the commencement of employment, a written declaration signed by the employer and containing at least the information referred to in Article 2 (2).

Where the document(s) referred to in paragraph 1 contain only part of the information required, the written declaration provided for in the first subparagraph of this paragraph shall cover the remaining information.

3. Where the contract or employment relationship comes to an end before expiry of a period of two months as from the date of the start of work, the information provided for in Article 2 and in this Article must be made available to the employee by the end of this period at the latest.

Article 4

Expatriate employees 1. Where an employee is required to work in a country or countries other than the Member State whose law and/or practice governs the contract or employment relationship, the document(s) referred to in Article 3 must be in his/her possession before his/her departure and must include at least the following additional information:

- (a) the duration of the employment abroad;
- (b) the currency to be used for the payment of remuneration;
- (c) where appropriate, the benefits in cash or kind attendant on the employment abroad;
- (d) where appropriate, the conditions governing the employee's repatriation.

2. The information referred to in paragraph 1 (b) and (c) may, where appropriate, be given in the form of a reference to the laws, regulations and administrative or statutory provisions or collective agreements governing those particular points.

3. Paragraphs 1 and 2 shall not apply if the duration of the employment outside the country whose law and/or practice governs the contract or employment relationship is one month or less.

Article 5

Modification of aspects of the contract or employment relationship 1. Any change in the details referred to in Articles 2 (2) and 4 (1) must be the subject of a written document to be given by the employer to the employee at the earliest opportunity and not later than one month after the date of entry into effect of the change in question.

2. The written document referred to in paragraph 1 shall not be compulsory in the event of a change in the laws, regulations and administrative or statutory provisions or collective agreements cited in the documents referred to in Article 3, supplemented, where appropriate, pursuant to Article 4 (1).

Article 6

Form and proof of the existence of a contract or employment relationship and procedural rules This Directive shall be without prejudice to national law and practice concerning:

- the form of the contract or employment relationship,
- proof as regards the existence and content of a contract or employment relationship,
- the relevant procedural rules.

Article 7

More favourable provisions This Directive shall not affect Member States' prerogative to apply or to introduce laws, regulations or administrative provisions which are more favourable to employees or to encourage or permit the application of agreements which are more favourable to employees.

Article 8

Defence of rights 1. Member States shall introduce into their national legal systems such measures as are necessary to enable all employees who consider themselves wronged by failure to comply with the obligations arising from this Directive to pursue their claims by judicial process after possible recourse to other competent authorities.

2. Member States may provide that access to the means of redress referred to in paragraph 1 are subject to the notification of the employer by the employee and the failure by the employer to reply within 15 days of notification.

However, the formality of prior notification may in no case be required in the cases referred to in Article 4, neither for workers with a temporary contract or employment relationship, nor for

employees not covered by a collective agreement or by collective agreements relating to the employment relationship.

Article 9

Final provisions 1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than 30 June 1993 or shall ensure by that date that the employers' and workers' representatives introduce the required provisions by way of agreement, the Member States being obliged to take the necessary steps enabling them at all times to guarantee the results imposed by this Directive.

They shall forthwith inform the Commission thereof.

2. Member States shall take the necessary measures to ensure that, in the case of employment relationships in existence upon entry into force of the provisions that they adopt, the employer gives the employee, on request, within two months of receiving that request; any of the documents referred to in Article 3, supplemented, where appropriate, pursuant to Article 4 (1).

3. When Member States adopt the measures referred to in paragraph 1, such measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

4. Member States shall forthwith inform the Commission of the measures they take to implement this Directive.

Article 10

This Directive is addressed to the Member States. Done at Luxembourg, 14 October 1991. For the Council