

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 563 final

Brussels, 8 January 1991

Proposal for a

COUNCIL DIRECTIVE

on a form of proof of an employment relationship

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(presented by the Commission)

## EXPLANATORY MEMORANDUM

### A. Introduction

1. The European Councils of Hannover, Rhodes and Madrid came to the conclusion that, in the context of completion of the single market, equal weight should be given to the social and economic aspects, and that the two should therefore be developed on an equal footing. Concurring with this view, the European Parliament (in a number of own-initiative resolutions) and the Economic and Social Committee (in its opinion of February 1989) likewise recognized the importance of this approach.
2. In its Action Programme relating to the implementation of the Community Charter of Basic Social Rights for Workers, the Commission announced under the heading "Improvement of living and working conditions" that it would submit a proposal for a Council Directive on the introduction of a form to serve as proof of an employment contract or relationship.

This Commission proposal, which will contribute to ensuring the greater transparency of the labour market, specifically concerns those workers who have neither a written contract of employment nor a letter of appointment explaining the elements of the employment relationship or referring to a collective agreement or any other easily accessible written document. However, in order to maintain reasonable flexibility and to avoid increasing the costs borne by enterprises, notably SMEs, this written declaration does not apply to employment relationships including no more than eight hours' work on average per week. Apart from this, the intention is to ensure that each worker knows for whom he works, where he works and what the basic conditions are.

### B. Current situation

3. The fact that companies are seeking more flexible (functional and/or numerical) forms of personnel management to enable them to adapt to market fluctuations and variations in demand, promote new types of production using new forms of technology and cope with international competition and the realities of the single market has encouraged the introduction and development of various forms of work, some of which are designed to meet the personal and family requirements of employees.
4. Certain long-standing forms of work, such as part-time or home working, have now been supplemented by such new forms as "part-time vertical work", i.e. work organized on a daily, weekly, monthly or annual basis, job-sharing, job-splitting, on-call work, work-training contracts and training schemes. The traditional employment relationship is also tending to be submerged by the growth in different forms of contract causing enterprises to change their employees' status to make them self-employed or small-scale sub-contractors, and leading also to an erosion of the criteria defining the traditional status of an employee. In the same perspective, the introduction of new forms of distance work, such as tele-work, can equally contribute to the shift away from the

conventional master-servant relationship. The concept of "employee" is also altering with the "externalisation" of employment such as, for example, the establishment of consortia of employers in certain countries.

5. Moreover, there is another development which has to be considered, the scale of which should not be overlooked is the context of this proposal for a Directive. New production methods and the explosive development of the service industry have both played a part in making the labour market considerably more flexible, thus generating new possibilities for "black work" and other illicit practices the development of which, in the medium term, is likely to penalise workers as much as employees by distorting the rules of the game.
6. These developments, to which must be added the greater flexibility in the time reference frame (adaptation of working time or development of intermittent and maintenance work), have also tended to cloud the position of many workers, leading to confusion, uncertainty and instability. They tend, a fortiori for those workers without written proof of their working relationship, to make workers unaware of certain social and professional rights linked to this relationship.
7. The provision of a written declaration relating to a form of proof of an employment relationship is designed, in consequence, to clarify the legal position of employees who are not covered by a written employment contract or letter of appointment, and, in particular, to give them a better idea of when, where and for whom they are supposed to be working, and, more generally, to give them written proof of the essential elements of this relationship. This will do a lot towards improving the transparency of the Community labour market, while at the same time giving workers more security, a better idea of their rights and more mobility within the Community. Moreover, the more general provision of a written proof of the working relationships may constitute an element in the fight against "black work".
8. In various Member States, certain employment contracts and relationships have become subject, by legislation or by contract, to formal requirements which make it easier for them to be identified.

The details of this obligation vary from one Member State to another. Whereas the written employment contract, which establishes primarily particular forms of employment, is compulsory mainly in the continental legal systems, it is primarily in the United Kingdom and Ireland that employers are required to inform employees in writing of the main conditions of their employment contract. The comparative study on working conditions in the Member States (SEC(89) 1137) shows that the nature of this written information, when it is provided for in the legal systems of the Member States, differs from one country to another depending on the type of employment relationship in question.

9. Although the Member States have to deal with the same problem of identifying how the various forms of work fit in with changes in the form of pay in Europe, their responses are so different that they hamper a true Community understanding of these developing

forms of work and prevent any consolidation of the social dimension of Europe. Nor do these disparities foster improvements in the position of workers or in mobility within the Community. They may constitute an obstacle to the effective functioning of the Common Market. It would appear essential, then, to bring provisions into line to enable workers to obtain proof of their employment relationship.

C. Proposed legislation

10. Legal basis

Given that this is a proposal for a Directive for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have a direct effect on the functioning of the Common Market, the legal basis used is Article 100 of the EEC Treaty.

11. Scope

This Directive concerns any working relationship emanating from a contract of employment or any other legal form of recruitment (e.g. teleworking, training, employment-training, etc.) which links a worker to an employer and which is subject to the legislation in force in a Member State. The concepts of employee and employer are based on Member States' national law. The idea is not to create obstacles to casual or low-volume work where the need to produce written evidence on each and every occasion would constitute an administrative constraint to the detriment of all parties. Consequently it is proposed to exclude from the scope of this Directive any employment relationships where the volume expressed in average number of hours worked per week is less than eight. This "de minimis" provision is similar to that used recently by the Commission in its proposals on certain employment relationships (COM(90) 228 final).

12. Content

The proposal for a Directive has as its objective the creation of an instrument to make employers responsible for providing precise information on the nature and content of working relationships in the company.

To this end, it makes provision for an obligation to provide all workers covered by this Directive with a document setting out the details of the conditions and elements of their employment relationships with their employer. As such, it does not relate to the rules of national law concerning the conclusion of employment contracts. The document in question is designed to be a declaratory element and written proof of the employment contract or relationship established in accordance with the national law of a Member State. The employer must sign the declaration and keep a copy.

13. The proposal also sets out the points for inclusion in the written declaration: standardization of the main elements of the document should prevent any differences between national legislation in this field. Finally, the proposal provides for employees to be informed

by their employers of any substantial changes affecting their working conditions as described in the written declaration, in particular where the worker in question is required to work in another country.

14. It should be emphasized here that the proposed declaration would not lead to a harmonization in terms of content (e.g. working time, remuneration, leave, social security etc). Any harmonization will be limited to the obligation to provide a written declaration and to standardize the information to be contained therein. In the absence of harmonized legal systems, this standardization will make it possible to avoid problems for the competent national authorities, companies and employees. It must be stressed, moreover, that Member States have the prerogative to apply or introduce laws, regulations or administrative provisions which are more favourable to employees.
15. Where an employee has a written contract of employment or a letter of appointment referring to another document governing the employment relationship, such as a collective agreement, for example, the written declaration is not obligatory.

## STATUTORY WRITTEN STATEMENT

	B	DK	F	FRG	GR	IRL	I	LUX	NL	P	SP	UK
WRITTEN DECLARATION (Statement)	-	-		-	-	Minimum Notice and Terms of Employment Act 1977 : within 1 month of beginning of employment, or within 1 month of employee's request		-	-	-	-	Employment Protection (Consoli- dation) Act 1978 : within 13 weeks of beginning of employment

**WRITT**

	B	DK	F	
<b>CONTRACTS WHICH MUST BE IN WRITING</b>	-part-time; -fixed-term; -for precisely indicated job; -replacement; -apprentice-ship; -temporary work through agency; -professional sportspersons	-apprentice-ship -for temporary work through temp. work agency	-homeworker; -fixed-term; -temporary; -apprentice-ship; -for temporary work through temp. work agency; -maritime or civil aircraft persons	-opi -shi

**LAW**

NL	P	SP	UK
temporary work through temp. work agency;	-fixed-term; -employment with a foreigner; -maritime workers; -workers on merchant vessels; -professional actors	-employment training and apprentice-ship; -part-time; -casual; -temporary with duration of more than four weeks; -to be performed abroad; -where demanded	-apprentice-ship -seamen on ship registered in UK

**Proposal for a**

**COUNCIL DIRECTIVE**

**on a form of proof of an employment relationship**

**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,**

**Having regard to the opinion of the European Parliament,**

**Having regard to the opinion of the Economic and Social Committee,**

**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 infringements of their rights and to create greater transparency in the labour market;**

**Whereas the relevant legislation of the Member States differs considerably in such fundamental areas as the requirement to put the conclusion of an employment contract into writing or the obligation to provide written proof of an employment relationship;**

**Whereas it is necessary to establish at Community level the general requirement that every employee must be provided with a document constituting a form of proof of the main terms of his employment relationship with his employer;**



Whereas it is nonetheless necessary to maintain a certain degree of flexibility in employment relationships and the aforementioned obligation to provide a written declaration should not therefore apply to employment relationships involving no more than eight hours' work on average per week;

Whereas the provision of a written declaration is superfluous in cases where there is a written contract of employment, a letter of appointment or any other document making reference to current provisions or collective agreements;

Whereas, in order to protect the interests of employees with regard to obtaining a written declaration, any substantive change in the contents of the declaration must be brought to the employee's attention in writing, particularly if he is sent to work abroad;

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

Whereas point 9 of Title I of the Community Charter of Fundamental Social Rights of Workers states that 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 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 the Member States may, in the first instance, leave it up to the social partners to attain the aims of this Directive, and in such cases it is for them to implement whatever provisions are necessary for its general application;

Whereas it is appropriate to ensure that the obligations arising from this Directive are effectively implemented by the Member States;

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive applies to any employment relationship which is subject to the legislation in force in a Member State.
2. The provisions of this Directive shall not apply to employment relationships involving no more than eight hours' work on average a week.

Article 2

1. The employer shall provide the worker with a written declaration in accordance with the provisions of this Directive no later than one month after he has been recruited.

The employer shall sign the declaration and keep a copy.

2. The declaration referred to in paragraph 1 shall contain the following main elements of information:

- the identity of the parties;
- place of work;
- a description of the job and category of employment;
- the duration of the employment relationship and, if appropriate, the duration of the trial period, and the period of notice;
- working time and paid leave;
- remuneration and method of payment;
- the social security system applicable and, if appropriate, any supplementary scheme,
- a reference to the collective agreements applicable.

3. Employees shall receive written notification of any substantive change to the elements of information listed in paragraph 2, especially in cases where employees are required to work in another country; in such cases employees must be assured, before their departure, of receiving the written declaration provided for in paragraph 2, which in this case must contain the following supplementary information:

- the duration of employment abroad;
- the foreign currencies used for the payment of wages or salaries;
- any benefits attendant on employment abroad;
- if appropriate, the circumstances of return to the employee's home country.

### Article 3

The written declaration in accordance with Article 2 shall not be compulsory if there is:

- a contract of employment in writing, or
- a letter of appointment or other document referring to a collective agreement or other regulations governing employment relationships, copies of which are easily accessible.

### Article 4

This Directive shall not affect Member States' prerogative to apply or introduce laws, regulations or administrative provisions which are more favourable to employees.

### Article 5

Member States shall take such measures as are necessary to ensure the application by all natural and legal persons of the obligations which derive from this Directive and to penalize any infringement of provisions made to apply this Directive.

### Article 6

1. Member States shall implement the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992, or shall ensure that the social partners establish the necessary provisions through agreement, without prejudice to the obligation on the Member States to achieve the results sought by this Directive.

2. Member States shall take the necessary measures to ensure that, for employment relationships which already exist when these provisions enter into force, the declaration for the employees referred to by this Directive is issued to them within six months of the date indicated in paragraph 1.
3. When Member States adopt these provisions, these shall contain a reference to this Directive, or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.
4. Member States shall immediately inform the Commission of the measures adopted to comply with this Directive.

Article 7

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

Competitiveness and employment impact statement

Proposal for a Council Directive on the provision of a written declaration concerning employment relationships.

I. What is the main reason for introducing the measure?

This proposal sets out to inform all employees of their conditions of employment, with a view to introducing more clarity into the respective rights and obligations of employers and workers throughout the Community labour market and providing for more legal security.

The current situation in the Member States is characterized by a wide variety of recruitment conditions and a multiplicity of contract and employment relationship types. There are major differences in Member States' legislation on fundamental points such as the need to establish the existence of an employment contract in writing or on the essential points to be set down in such contracts. Differences of this kind can have a direct effect on the functioning of the Common Market. This proposal for a Directive sets out to bring national legislation into line within the meaning of Article 117 of the EEC Treaty.

II. Features of the businesses in question

This proposal covers all employers who are party to employment contracts or other forms of employment relationship.

III. What direct obligations does this measure impose on businesses?

Firms will be required to provide every employee with a written document containing the essential elements of the contract or employment relationship. Any change in the conditions of work as set out in the document will have to be brought to the attention of the workers concerned. However, to make for more flexibility, the draft directive does not apply to employment relationships, the duration of which do not exceed an average of eight hours of work per week.

The existence of a written employment contract, or letter of appointment or any other document referring to a collective agreement or to regulations governing the employment relationship removes the obligation of providing a written declaration.

IV. What direct obligations are local authorities likely to impose on businesses?

None.

V. Are there any special measures in respect of SMEs?

No.

VI. What is the likely effect on:

a) the competitiveness of businesses?

All businesses throughout the Community will be subject to the same obligations in respect of their employees; any supplementary administrative obligations and any additional cost will have to be borne by all firms operating on the Community market. In the long term, the result will be a better balance between worker protection and business competitiveness.

b) employment?

The aim of the proposal is to introduce more clarity into the labour market and to make it easier to compare working situations within the context of boosting employment prospects; the intended document will help to reduce uncertainty, misunderstanding and conflict.

VII. Have both sides of industry been consulted?

Yes.

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# DOCUMENTS

**EN**

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