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R E P O R T

of the Committee on Social Affairs, Employment and the Working Environment

on the Commission proposal for a Council directive on a form of proof of an employment relationship
(COM(90) 0563 final - C3-0044/91)

Rapporteur: Mrs Heinke SALISCH

A Series: Reports, Resolutions, Recommendations for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations) PE 146 . 352/fin.

* = Consultation procedure requiring a single reading

**II = Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment

**I = Cooperation procedure (first reading)

*** = Parliamentary assent which requires the votes of a majority of the current Members of Parliament

C O N T E N T S

	<u>Page</u>
Procedural page	3
A. Amendments to the Commission proposal	4
DRAFT LEGISLATIVE RESOLUTION	12
 <u>Annex:</u>	
- Opinion of the Committee on Legal Affairs and Citizens' Rights	13
- Opinion of the Committee on Economic and Monetary Affairs and Industrial Policy	15

By letter of 25 January 1991 the Council consulted the European Parliament, pursuant to Article 100 of the EEC Treaty, on the Commission proposal for a Council directive on a form of proof of an employment relationship.

At the sitting of 18 February 1991 the President of Parliament announced that he had referred this proposal to the Committee on Social Affairs, Employment and the Working Environment as the committee responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on Legal Affairs and Citizens' Rights and the Committee on Women's Rights for their opinions.

At its meeting of 28 September 1990 the Committee on Social Affairs, Employment and the Working Environment appointed Mrs Salisch rapporteur.

By letter of 4 February 1991 the committee consulted the Committee on Legal Affairs and Citizens' Rights, pursuant to Rule 36(3) of the Rules of Procedure, on the appropriateness of the proposed legal basis.

At its meetings of 7 and 26 February, 21 March, 22 April and 21 May 1991 it considered the Commission proposal and draft report.

At the latter meeting it adopted the draft legislative resolution by 17 votes to 3, with 7 abstentions.

The following were present for the vote: van Velzen, chairman; De Vitto and Barros Moura, vice-chairmen; Salisch, rapporteur; von Alemann, Alvarez de Paz, Brok, Buron, Cabezon Alonso, Catasta, Coimbra Martins (for Torres Couto), Cushnahan (for Pisoni), Ephremidis (for Elmalan), Hughes, Marques Mendes, Megahy, Menrad, Newman (for Glinne), Nianias, Nielsen, Oddy (for McMahon), O'Hagan, Onur (for Peter), Pagoropoulos, Pronk, Rønn and Suarez Gonzalez.

The explanatory statement will be presented orally in plenary sitting.

The opinion of the Committee on Legal Affairs and Citizens' Rights on the legal basis and the opinion of the Committee on Economic and Monetary Affairs and Industrial Policy are attached.

At its meeting of 27 February 1991 the Committee on Legal Affairs and Citizens' Rights decided not to deliver an opinion.

The opinion of the Committee on Women's Rights will be published separately.

The report was tabled on 24 May 1991.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

A

Commission proposal for a Council directive on a form of proof of an employment relationship

Commission text¹

Amendments

(Amendment No. 1)

First citation

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

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 118a thereof,

(Amendment No. 2)

Third citation

Having regard to the opinion of the European Parliament,

In cooperation with the European Parliament,

(Amendment No. 3)

Before the first recital, new recital

Whereas the action programme that is the practical implementation of the Community Charter of fundamental social rights for workers provides for the submission of this proposal for a directive in order to contribute to the improvement of the living and working conditions of workers who are, moreover, largely dependent on contractual relationships;

(Amendment No. 4)

First recital

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

¹ For full text see COM(90) 0563 final - OJ No. C 024, 31.1.1991, p. 3

Commission text

Amendments

(Amendment No. 5)
Second recital a (new)

Whereas the increase in flexible in forms of employment and the growing importance of precarious contracts threaten to undermine the economic and social cohesion of the Community and create distortions in the operation of the market which are bound to result in a curb on the balanced growth of the Community regions;

(Amendment No. 6)
Second recital b (new)

Whereas one of the objectives of completing the internal market is to guarantee the flexibility of undertakings and whereas this will result increasingly in the development of atypical forms of employment;

(Amendment No. 7)
Fourth recital

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 necessary to establish at Community level the general requirement that every employee must be provided with a document
- relating both to the parties to the contract and to the work to be undertaken - constituting a form of proof of the terms of employment relationship with his employer;

Commission text

Amendments

(Amendment No. 8)
Fifth recital

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 aforementioned obligation would not be incompatible with flexibility in employment relationships;

(Amendment No. 9)
Sixth recital

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 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 - drawn up in accordance with the conditions laid down in the declaration - making reference to current provisions or collective agreements;

(Amendment No. 10)
Eighth recital

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

Whereas it is necessary to approximate the laws, regulations and administrative provisions concerned with the establishment and operation of the internal market;

Commission text

Amendments

(Amendment No. 11)
Tenth recital a (new)

Whereas Article 118a of the EEC Treaty provides that Member States shall pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers, and shall set as their objective the harmonization of conditions in this area, while maintaining the improvements made;

(Amendment No. 12)
Eleventh recital

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 the Members States may, out of respect for the independence of the social partners, leave it up to them 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;

(Amendment No. 13)
Twelfth recital

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

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

(Amendment No. 14)
Article 1(1)

1. This directive applies to any employment relationship which is subject to the legislation in force in a Member State.

1. This directive applies to any employment relationship, to all activity, whether public or private, and to any worker subject de jure or de facto to the organizational and managerial authority of an employer, irrespective of the wording used by the parties.

Commission text

Amendments

(Amendment No. 15)
Article 1(2)

2. The provisions of this directive shall not apply to employment relationships involving no more than eight hours' work on average a week. Deleted

(Amendment No. 16)
Article 2(1)

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

The employer shall sign the declaration and keep a copy.

The employer shall sign the declaration and keep a copy.

The employee shall confirm receipt thereof in a special document.

(Amendment No. 17)
Article 2(1a) (new)

- 1a. The declaration must be written in a language with which the employee is familiar and may only be used as proof.

(Amendment No. 18)
Article 2(2), introductory phrase

2. The declaration referred to in paragraph 1 shall contain the following main elements of information:
2. With reference to the social law provisions, collective wage agreements and supplementary social security schemes applicable, the declaration referred to in paragraph 1 shall contain the following main elements of information:

(Amendment No. 19)
Article 2(2), fourth indent

- a description of the job and category of employment;
- a description of the job and category of employment or contractual engagement;

Commission text

Amendments

(Amendment No. 20)

Article 2(2), fifth indent

- | | |
|--------------------------------|---|
| - working time and paid leave; | - working time, <u>recuperation time, overtime rules, agreements regarding sick leave and paid leave;</u> |
|--------------------------------|---|

(Amendment No. 21)

Article 2(2), fifth indent a (new)

- the nature of the occupational risks pursuant to Directive 89/391/EEC of 12 June 1989;

(Amendment No. 22)

Article 2(2), sixth indent

- | | |
|---------------------------------------|---|
| - remuneration and method of payment; | - remuneration <u>in its various forms and method of payment;</u> |
|---------------------------------------|---|

(Amendment No. 23)

Article 2(2), seventh indent

- | | |
|---|---|
| - <u>the social security system applicable and, if appropriate, any supplementary scheme;</u> | - <u>where employees are subcontracted, and if so stipulated in national law: particulars of the undertaking hiring them out;</u> |
|---|---|

(Amendment No. 24)

Article 2(3), introductory paragraph

- | | |
|---|--|
| 3. Employees shall receive written notification of any <u>substantive change to the elements of information listed in paragraph 2, especially in cases where employees are required to work in another country:</u> | 3. Employees shall receive written notification of any change to the elements of information listed in paragraph 2, especially in cases where employees are required to work in another country: |
|---|--|

Commission text

Amendments

(Amendment No. 25)
Article 2(3), third indent

- any benefits attendant on employment abroad;

- any benefits and risks attendant on employment abroad;

(Amendment No. 26)
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.

The written declaration 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 regulation governing employment relationships, containing at least the elements laid down in Article 2(2).

(Amendment No. 27)
Article 3a (new)

Trade union representatives in undertakings and work inspection bodies must have access to information contained in the staff register.

(Amendment No. 28)
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.

Member States shall be obliged to penalize any infringement of the obligation to provide proof by applying sufficiently stringent sanctions (see the judgment of the European Court of Justice of 10 April 1984 on the directive on equality of treatment). Furthermore, local working conditions shall continue to apply in so far as the employee cannot show that more favourable conditions can be obtained by other means.

Commission text

Amendments

(Amendment No. 29)
Article 5(1a) (new)

- 1a. Any employment relationship concluded in contravention of the provisions of this Directive shall be presumed to be of indeterminate duration and may be broken only for a legitimate reason.

(Amendment No. 30)
Article 6(4a) (new)

- 4a. Member States shall forward to the Commission, no later than two years from the expiry of the deadline laid down in Article 6(1), all the information needed to enable it to draw up a report for submission to the Council and the European Parliament on the implementation of this Directive.

(Amendment No. 31)
Article 6(4b) (new)

- 4b. The Commission shall regularly submit a report to the European Parliament, the Council and the Economic and Social Committee on the implementation of this Directive.

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on the proposal
from the Commission to the Council for a directive on a
form of proof of an employment relationship

The European Parliament,

- having regard to the Commission proposal to the Council (COM(90) 0563 final)¹,
 - having been consulted by the Council pursuant to Article 100 of the EEC Treaty (C3-0044/91),
 - having regard to the report of the Committee on Social Affairs, Employment and the Working Environment and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on Legal Affairs and Citizens' Rights and the Committee on Women's Rights (A3-0141/91),
1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
 2. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 3. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ No. C 024, 31.1.1991, p. 3

OPINION

of the Committee on Legal Affairs and Citizens' Rights

Letter from the chairman of the committee to Mr van VELZEN, chairman of the Committee on Social Affairs, Employment and the Working Environment

Brussels, 3 April 1991

Dear Mr van Velzen,

By letter of 4 February 1991 you informed me of your committee's decision to ask the Committee on Legal Affairs and Citizens' Rights, pursuant to Rule 36(3) of the Rules of Procedure, to consider the legal basis for the proposal for a Council directive on a form of proof of an employment relationship (C3-0044/91 - COM(90) 0563 final). The proposal for a directive is based on Article 100 of the EEC Treaty, but your committee took the view that the provisions of Article 100a, or even those of Article 118a, would be a more appropriate legal basis.

The Committee on Legal Affairs and Citizens' Rights considered the matter at its meetings of 18, 19 and 20 March and 2 and 3 April 1991. At the latter meeting it decided² by 14 votes to 2, with 4 abstentions, that Article 100 of the EEC Treaty does in fact represent the appropriate legal basis for the proposal for a directive.

In accordance with the draftsman's conclusions, which the majority of members of the committee endorsed, Article 100a cannot be regarded as an appropriate legal basis for the proposal for a directive in question, given that paragraph 2 of that Article stipulates that it shall not apply to provisions 'relating to the rights and interests of employed persons'. However, one of the objectives of the proposal for a directive is to 'provide employees with improved protection against infringement of their rights'.

² The following took part in the vote: Stauffenberg, chairman; Vayssade and Rothley, vice-chairmen; Salema, draftsman; Bontempi, Cooney, Falconer, Garcia Amigo, Grund, Herman (for Anastassopoulos), Hoon, Inglewood, Janssen van Raay, Klepsch (for Cabanillas Gallas), Malangre, Megahy (for Bru Puron), Rønn (for Marinho), Roth-Behrendt (for Medina Ortega, Wijsenbeek and Zavvos.

Article 118a is also inappropriate. The broad, dynamic interpretation placed on the concepts of 'working environment' and 'health and safety of workers' cannot serve to nullify the other social policy provisions set out in the Treaty. In this context, the restricted scope of that provision cannot be extended to cover the legal protection offered to workers by a form of proof of an employment relationship.

Yours sincerely,

(sgd) Graf STAUFFENBERG

OPINION

of the Committee on Economic and Monetary Affairs and Industrial Policy

Letter from the chairman of the committee to Mr van VELZEN, chairman of the Committee on Social Affairs, Employment and the Working Environment

Brussels, 19 March 1991

Subject: Proposal for a Council Directive on a form of proof of an employment relationship
(COM(90) 0563 - C3-0044/91)

Dear Mr van Velzen,

At its meeting of 18-20 March 1991, the Committee on Economic and Monetary Affairs and Industrial Policy considered the above subject and expressed the wish to make the following observations.

The aim of the proposed Directive is to guarantee all workers, employed more than eight hours per week, the right to know the name of their employer and their place and conditions of employment.

As far as the Economic Committee is concerned, if this right makes the labour market more transparent and secure, it will increase freedom of movement and social mobility. Such a benefit is consistent with the primary objective of Article 8a which establishes the internal market and with the Charter of Fundamental Social Rights of Workers.

Differences in the legislation of Member States have a direct effect on the operation of the common market. The Commission seems to believe that in order to benefit from freedom of movement of workers, a minimum approximation of Member States' legislation is necessary. However, only the UK and Ireland have legislated on the matter.

The appropriate question to ask is: 'whether the absence of such a document could create uncertainty as to whether an employment relationship existed'. If the answer would be yes, then a written declaration of the kind requested under Article 2 would be proof of an employment relationship and should be compulsory for all types of employment. Hence, Article 3 should be revised to make the 'contract of employment' and 'letter of appointment' equivalent to the 'written declaration' requested under Article 2.

Such an obligatory issue of a written document might cause a rise in costs but it might combat undeclared work and other illicit forms of employment that generate distortions of competition and fragmentation of labour markets.

Subject to the above observations, the committee approves the proposal under consideration.³

Yours sincerely,

Bouke BEUMER

³ The following were present for the vote: Beumer, chairman; Fuchs, vice-chairman; Barton, Cox, Donnelly, Ernest de la Graete, Mr Falconer (for Ford), Hoppenstedt, Merz, Ribeiro, Siso Cruellas, Stevens and Tongue.