

Direktivforslaget om gennemsigtige og forudsigelige arbejdsvilkår – ændringsforslag og bemærkninger hertil

Kommissionens forslag [UK]	Ændringsforslag	Bemærkninger til ændringsforslag
<p>Article 1 <i>Purpose, subject matter and scope</i></p> <ol style="list-style-type: none"> The purpose of this Directive is to improve working conditions by promoting more secure and predictable employment while ensuring labour market adaptability. This Directive lays down minimum rights that apply to every worker in the Union. Member States may decide not to apply the obligations in this Directive to workers who have an employment relationship equal to or less than 8 hours in total in a reference period of one month. Time worked with all employers forming or belonging to the same enterprise, group or entity shall count towards that 8 hour period. Paragraph 3 shall not apply to an employment relationship where no guaranteed amount of paid work is predetermined before the employment starts. Member States may determine which persons are responsible for the execution of the obligations for employers laid down by this Directive as long as all those obligations are fulfilled. They may also decide that all or part of these obligations shall be assigned to a natural or legal person who is not party to the employment relationship. This paragraph is without prejudice to Directive 2008/104/EC. Member States may decide not to apply the obligations set out in Articles 10 and 11 and Article 14(a) to natural persons belonging to a household where work is performed for that household. <p>Chapter II of this Directive applies to seafarers and fishermen without prejudice to Council Directive 2009/13/EC and Council Directive (EU) 2017/159, respectively.</p>	<p>Nr. 3 udgår</p>	<p>Det er ikke relevant, hvor mange timer en arbejdstager er ansat pr måned. Behovet for, at arbejdsvilkårene ligger fast, er de samme uanset, hvor mange timer man er ansat.</p>
<p>Article 2. <i>Definitions</i></p> <ol style="list-style-type: none"> For the purposes of this Directive, the following definitions shall apply: <ol style="list-style-type: none"> ‘worker’ means a natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration; 	<p>I stk. 1, litra a, indsættes som nyt led: ”samt personer, der udfører arbejde i tilsvarende situationer, fx arbejdstagere på onlineplatforme;</p>	<p>Den foreslåede definition er for snæver, hvis man skal opfange de nye atypiske beskæftigelsesformer, som det ellers er direktivforslagets formål. Forslaget bygger således alene på EU-Domstolens retspraksis i forhold til arbejdstagerbegrebet. Dette forudsætter nemlig en traditionel</p>

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<p>b. 'employer' means one or more natural or legal person(s) who is or are directly or indirectly party to an employment relationship with a worker;</p> <p>c. 'employment relationship' means the work relationship between workers and employers as defined above;</p> <p>d. 'work schedule' means the schedule determining hours and days on which performance of work starts and ends;</p> <p>e. 'reference hours and days' means time slots in specified days during which work can take place at the request of the employer.</p> <p>2. For the purposes of this Directive the terms 'microenterprise', 'small enterprise' and 'medium-sized enterprise' shall have the meaning set out in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises¹³ or in any subsequent act replacing that Recommendation.</p>		<p>ledelsesret, der imidlertid er uklar i forhold til mange af de nye ansættelsesformer</p>
<p>Article 3 <i>Obligation to provide information</i></p> <p>1. Member States shall ensure that employers are required to inform workers of the essential aspects of the employment relationship</p> <p>2. The information referred to in paragraph 1 shall include:</p> <p>a) the identities of the parties to the employment relationship;</p> <p>b) the place of work; where there is no fixed or main place of work, the principle that the worker is employed at various places or is free to determine his or her place of work, and the registered place of business or, where appropriate, the domicile of the employer;</p> <p>c) (i) the title, grade, nature or category of the work for which the worker is employed; or (ii) a brief specification or description of the work;</p> <p>d) the date of commencement of the employment relationship;</p> <p>e) in the case of a temporary employment relationship, the end date or the expected duration thereof;</p> <p>f) the duration and conditions of the probationary period, if any;</p> <p>g) any training entitlement provided by the employer;</p> <p>h) the amount of paid leave to which the worker is entitled or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;</p>		

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<p>i) the procedure, including the length of the period of notice, to be observed by the employer and the worker should their employment relationship be terminated 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;</p> <p>j) the initial basic amount, any other component elements, the frequency and method of payment of the remuneration to which the worker is entitled;</p> <p>k) if the work schedule is entirely or mostly not variable, the length of the worker's standard working day or week and any arrangements for overtime and its remuneration;</p> <p>l) 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 entirely or mostly determined, by the employer:</p> <p>(i) the reference hours and days within which the worker may be required to work;</p> <p>(ii) the minimum advance notice the worker shall receive before the start of a work assignment;</p> <p>m) any collective agreements governing the worker's conditions of work; 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;</p> <p>n) 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.</p> <p>3. The information referred to in paragraph 2(f) to (k) and (n) 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.</p>		
<p>Article 4 <i>Timing and means of information</i></p> <p>1. The information referred to in Article 3(2) shall be provided individually to the worker in the form of a document at the latest on the first day of the employment relationship. That document may be provided and transmitted electronically as long as it is easily accessible by the worker and can be stored and printed.</p> <p>2. Member States shall develop templates and models for the document referred to in paragraph 1 and put them at the disposal of workers</p>	<p>I nr. 1 ændres ”on the first day” til: “forinden arbejdets påbegyndelse”</p>	<p>Det er vigtigt for både arbejdstageren og arbejdsgiveren at arbejdsvilkårene er utvetydigt fastsatte, så der ikke efterfølgende opstår uenigheder. Dette opnås kun, såfremt vilkårene er fastlagte forinden arbejdets påbegyndelse</p>

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<p>and employers including by making them available on a single official national website and by other suitable means.</p> <p>3. Member States shall ensure that the information on the laws, regulations and administrative or statutory provisions or collective agreements governing the legal framework applicable which are to be communicated by employers is made generally available free of charge in a clear, transparent, comprehensive and easily accessible way at a distance and by electronic means, including through existing online portals for Union citizens and businesses.</p>	<p>Som nyt nr. 4 indsættes: ”Ansættelsesbeviset skal udarbejdes på ansættelsesstatens sprog. Hvis staten har flere statsligt anerkendte sprog, da det af disse, som arbejdstageren er tættest knyttet til”</p>	<p>Vi ønsker i art. 4 indsat en bestemmelse, der sikrer, at arbejdstageren modtager en ansættelseskontrakt på et sprog, vedkommende fuldt ud forstår</p>
<p>Article 12 <i>Collective agreements</i></p> <p>Member States may allow social partners to conclude collective agreements, in conformity with the national law or practice, which, while respecting the overall protection of workers, establish arrangements concerning the working conditions of workers which differ from those referred to in Articles 7 to 11.</p>	<p>Som nyt stk. 2 indsættes: “Bestemmelserne I art. 7-11 kan endvidere fraviges ved kollektive overenskomster indgået mellem de mest repræsentative arbejdsmarkedsparter på nationalt plan”</p>	<p>Som det fremgår af art. 152 i TEUF’s skal EU respektere de nationale systemers forskelligartede karakter. Som det yderligere fremgår af art. 151, 2. afsnit, skal der tages hensyn til national praksis, særlig på overenskomstområdet.</p> <p>Dette vil sige, at i medlemslande med en arbejdsmarkedsmodel, hvor løn- og arbejdsvilkår fastsætter ved kollektive overenskomster indgået mellem ligeværdige parter, skal disse aftaler respekteres</p>
<p>Article 14 <i>Legal presumption and early settlement mechanism</i></p> <p>Member States shall ensure that, where a worker has not received in due time all or part of the documents referred to in Article 4(1), Article 5, or Article 6, and the employer has failed to rectify that omission within 15 days of its notification, one of the following systems shall apply:</p> <p>a. the worker shall benefit from favourable presumptions defined by the Member State. Where the information provided did not include the information referred to in points (e), (f), (k) or (l) of Article 3(2), the favourable presumptions shall include a presumption that the worker has an open-ended employment relationship, that there is no probationary period or that the worker has a fulltime position, respectively. Employers shall have the possibility to rebut the presumptions; or</p> <p>b. the worker shall have the possibility to submit a complaint to a competent authority in a timely manner. If the competent authority finds that the complaint is justified, it shall order the relevant employer(s) to provide the missing information. If the employer does not provide the missing information within 15 days following receipt of the order, the authority shall be able to impose an appropriate administrative penalty, even if the employment relationship has ended. Employers shall have the possibility to lodge an administrative appeal against the decision imposing the penalty.</p>	<p>Overskriften ændres til: ”Retlig formodning” og</p> <p>”or” udgår i slutningen af litra a</p> <p>Og litra b ændres til: ”art. 14 b”</p>	<p>Litra a og b drejer sig om helt forskellige forhold. Der bør derfor ikke være tale om alternativer. Yderligere opererer de retlige instanser i praksis med de formodninger, der fremgår af litra a. Opstillingen af litra a og b som alternativer vil dermed undergrave direktivet formål og svække arbejdstagernes retstilling</p>

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Member States may designate existing bodies as competent authorities.		