



EUROPEAN COMMISSION

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Dear Speaker,

The Commission would like to thank the Riksdag for its Reasoned Opinion on the proposal for a Directive on transparent and predictable working conditions in the European Union {COM(2017) 797 final}.

This proposal is one of the key legislative initiatives presented by the Commission in the context of the European Pillar of Social Rights. The Pillar, proclaimed jointly by the European Parliament, the Council and the Commission at the Social Summit in Gothenburg on 17 November 2017, articulates a shared commitment to deliver a strong social Europe and to contribute to fair and well-functioning labour markets and welfare systems, fit for the challenges of the 21st century.

Social, economic, demographic and technological changes have in recent years had a significant impact on the labour markets of the European Union. While permanent, full-time jobs are still the prevalent form of work, the relative share of non-standard and part-time work has increased. New and non-standard work has contributed significantly to job creation and has created new opportunities for workers, including those most vulnerable, to enter and remain in the labour market. In the last ten years, more than half of all new jobs have been non-standard. However, workers in such jobs have sometimes also found themselves in precarious situations, with very little predictability in their working schedules and few perspectives for progression towards more stable jobs.

While these phenomena affect Member States' labour markets to different degrees and a variety of responses have been taken at national level, be it through legislation or collective agreements, the generally observed growing diversity of forms of work exposes gaps in labour regulation at both national and European Union level. The large diversity of national regulatory responses opens up loopholes that can be exploited to enable competition on the basis of reduced social standards and a margin for social dumping.

*Mr Urban AHLIN
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The proposed Directive aims to complement the existing social acquis in the European Union and to set common minimum standards for workers' protection to reduce the risk of undercutting social standards. It revises provisions of the current Written Statement Directive¹ to ensure that also those in less stable working relationships (on very short contracts, casual and on-demand workers, etc.) can benefit from the minimum right to receive written information about their essential working conditions. It proposes to extend and to update the information package required to be provided by employers and to ensure that workers receive it in a timely manner: at the start of the new job rather than up to two months later.

The proposal strengthens the enforcement mechanisms and includes a number of new minimum material rights, aimed to improve predictability of working conditions, particularly for those in precarious employment. These rights include a limit on probationary periods, provisions on reference hours and days, minimum advance notice, a right to seek additional employment, a right to receive a reply to a written request for a more stable job and to receive mandatory training cost-free. The proposal allows considerable scope for these material rights to be modified by means of collective agreements, which will be important for labour markets such as that of Sweden where the social partners play a central regulatory role.

The Commission notes that the Riksdag acknowledges the importance of transparent and predictable working conditions, the need to adapt to developments in the labour markets as well as the common interest in greater upward convergence in living and working conditions in the European Union. At the same time, the Commission has examined closely the Riksdag's concerns about the respect of the subsidiarity principle and possible effects on the Swedish labour market model.

The Riksdag argues, first of all, that the issues addressed in the proposal should be more appropriately dealt with at national level because of the lack of a clear transnational dimension and the diversity of relevant national conditions and systems. The Commission would like to point out that the aim of the proposal is not to replace national action or harmonise legislation across the European Union, but rather to support and complement the Member States' activities, in line with Article 153 of the Treaty on the Functioning of the European Union. The proposal includes a number of revised and new minimum requirements necessary to protect the most vulnerable workers in the Union and avoid a race to the bottom which could negatively impact the competitiveness of companies in the Single Market. A similar approach has been taken in other areas of the European Union's social acquis, such as the framework for health and safety at work, legislation on working time, temporary agency work or fixed-term work.

The Reasoned Opinion furthermore highlights the issue of the possible interference of the proposed substantial rights and the definition of worker with the Swedish labour market model, based on the responsibility of social partners. The Commission very much values the Swedish labour market model and the strong and independent role of the Swedish

¹ Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

social partners. It is also committed to promoting social dialogue at European level and in all Member States. The Commission regrets that the European social partners failed to reach a mandate for negotiations on the matters covered by the proposal, despite the two stages of formal consultations and the efforts at the highest level of the Commission to enable such negotiations to take place. In the absence of the negotiations and aware of the key role that social partners at national and sector level play in designing effective and efficient frameworks for working conditions, the Commission made sure that the proposal offers a large scope of flexibility for social partners to implement the provisions and leaves the possibility for social partners to adapt and modify the proposed new material rights, as long as the overall protection of workers is respected.

Finally, according to the Riksdag, there is a risk that the proposed definition of worker could have an impact beyond labour law, including in areas falling under the exclusive competence of the Member States. On this point, it is important to note that the proposal codifies a number of criteria for the definition of worker that have long been established in the jurisprudence of the Court of Justice of the European Union, concerning a wide range of European social legislation. Furthermore, the definition applies only to the personal scope of the proposed Directive and, as such, does not affect other areas of national law. Clarity on criteria for establishing who falls under the scope of the Directive is crucial from the point of view of its purpose, which is to provide protection for the widest categories of workers and in particular the most vulnerable workers, who are often excluded from worker status. Also, such clarity increases legal certainty and reduces the risk of negative retroactive consequences for employers in the case of the outcome of a judgment of the Court of Justice on the status of workers.

The Commission fully acknowledges the merits of the Swedish labour market model and welcomes the assessment included in the Riksdag's Reasoned Opinion that the issues addressed in the proposed Directive have been already largely solved in Sweden through collective agreements. Indeed, the Commission is not aware of any Swedish labour laws or collective agreements that would not meet the minimum conditions proposed – be it in terms of the definition of worker or the general level of protection that the proposed Directive aims for. The Commission considers in fact that its proposal could support the Swedish model by promoting higher social standards and encouraging a more active role of social partners also in other Member States, and limiting the scope for unfair competition based on working conditions.

Discussions between the Commission and the co-legislators concerning the proposal are now underway. The issues of subsidiarity and autonomy of social partners are among the most prominent points in these discussions. The Riksdag's Reasoned Opinion has been made available to the Commission's representatives in the ongoing negotiations with the co-legislators. The Commission remains hopeful that a suitable compromise will be reached in the near future, as the Presidency of the Council is aiming for a General Approach to be reached by summer 2018.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Riksdag and looks forward to continuing the political dialogue for the benefit of the at least 2-3 million of European workers for whom the proposed Directive would bring tangible improvements in terms of transparency and predictability of working conditions.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Marianne Thyssen
Member of the Commission*