



EUROPEAN COMMISSION

*Brussels, 3.8.2018  
C(2018) 5326 final*

*Dear President,*

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

*On 17 November 2017, the European Parliament, the Council and the Commission jointly proclaimed the European Pillar of Social Rights, setting out a number of key principles and rights to support fair and well-functioning labour markets and welfare systems. The principles defined in the Pillar explicitly address the challenges related to new forms of employment and adequate working conditions in atypical forms of employment.*

*The proposal is a major contribution to implementing the European Pillar of Social Rights, notably its Principles 5 (Secure and adaptable employment) and 7 (Information about employment conditions). The aim is to ensure a set of minimum fair working conditions across the European Union and across all forms of contracts. This would set a framework within which new forms of work could further develop, offering fairer protection to workers, a clearer reference framework for national inspectors, legislators and courts. This new framework would offer a better level playing field for businesses within the internal market.*

*As regards the scope of the proposal, the Commission would like to clarify that genuine self-employed are not covered by the proposed definition of worker and therefore fall outside of the scope of this initiative.*

*As far as the timeframe for the information to the worker is concerned, the proposal implements Principle 7 of the European Pillar of Social Rights, according to which workers have the right to be informed in writing at the start of employment about their rights and obligations. Moreover, the proposal builds on good practices in some Member States. In particular employers in several Member States are currently required to provide a written statement even before the start of the employment. The experience of those Member States shows that this is quite feasible and supports the fight against undeclared work.*

*Ms Inge Posch-Gruska  
President of the Bundesrat  
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*As regards the proposed provisions on enforcement, it is the Commission's duty to propose measures which ensure that the EU acquis is effectively applied by the Member States. Both the evaluation of the Written Statement Directive<sup>1</sup> under the Regular Fitness and Performance programme (REFIT) and the public consultation on the European Pillar of Social Rights have underlined the importance of enforcement mechanisms to ensure that workers' rights are respected. The proposed provisions on enforcement leave Member States a margin of manoeuvre. Thus, Article 14 of the proposal provides, on the basis of good practice among Member States, for two alternative avenues of redress for failure to provide all or some of the information set out in the written statement. Moreover, Article 15 of the proposal leaves it entirely to Member States to determine the modalities to ensure access to effective and impartial dispute resolution and the right to redress.*

*The Commission would also like to stress that the burden of proof envisaged by the proposal in respect to the protection from dismissal is shared between the worker and the employer. Indeed, only if the worker succeeds in establishing some evidence from which it may be presumed that he/she has been dismissed on the grounds of having exercised the rights provided for in the proposed Directive, the burden of proof that the dismissal or alleged detrimental treatment was based on other objective reasons is shifted to the employer.*

*The Commission takes note of the position of the Bundesrat concerning Article 13 of the proposal, which would require Member States to take all necessary measures to ensure that provisions contrary to the proposal in individual or collective agreements are declared null and void or amended in order to bring them into line with the proposal.*

*Discussions between the Commission and the co-legislators concerning the proposal are now underway and the Commission remains confident that an agreement will be reached before the end of the current Parliamentary term.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Elżbieta Bieńkowska  
Member of the Commission*

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<sup>1</sup> 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, OJ L 288, 18.10.1991, p. 32.