REPORT ON THE IMPLEMENTATION OF DIRECTIVE 91/533/EEC

ON AN EMPLOYER’S OBLIGATION TO INFORM EMPLOYEES OF THE CONDITIONS APPLICABLE TO THE CONTRACT OR EMPLOYMENT RELATIONSHIP

(COUNCIL DIRECTIVE 91/533/EEC OF 14 OCTOBER 1991)
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1. **Introduction**

On 14 October 1991 the Council of the European Communities adopted Directive 91/533/EEC on an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship. The Member States were notified of this Directive on 25 October 1991. Under Article 9(1) they are required to adopt the laws, regulations and administrative provisions necessary to comply with the Directive no later than 30 June 1993 or to ensure by that date that the employers’ and workers’ representatives introduce the required provisions by way of agreement, the Member States being obliged to take the necessary steps enabling them at all times to guarantee the results imposed by the Directive. Under Articles 9(1) and 9(4) the Member States must inform the Commission of the measures taken to implement the Directive.

The Commission, in paragraph 11.1.3 of the Medium-term Social Action Programme (1995-97), announced a review of the implementation situation for directives where no implementation report has been foreseen.

The aim of this Directive is, according to the preamble, to provide employees with improved protection to avoid uncertainty and insecurity about the terms of the employment relationship and to create greater transparency on the labour market. To this end the Directive states that every employee must be provided with a document containing information on the essential elements of his contract or employment relationship. Furthermore, in accordance with Article 5, the employee must be provided with information in any change in the essential elements of the contract or employment relationship except in the event of a change in the laws, regulations and administrative or statutory provisions cited in the documents.

The Directive 91/533 seeks to encourage substantial convergence of labour legislation in the Member States so that the variety of rules existing in the countries of the Community, including those relating to the rights of information, cannot prejudice the smooth operation of the common market and the improvement of living and working conditions for its labour force.

The Directive lays down minimum standards (Article 7) without prejudice (Article 6) to national laws concerning the form of the contract or employment relationship, proof regarding the existence of such relationships or the relevant procedural rules.

2. **Transposition of the Directive by Member States**

Assessment of how far the Directive has been transposed must be based on an analysis of the scope (Article 1), the extent of the obligation to provide information to the employee (Article 2), the forms and means of information (Article 3), information in the case of expatriation (Article 4), the information of modification of aspects of the contract or the employment relationship (Article 5), the required information regarding the employment relationship in existence (Article 9.2) and defence of rights (Article 8).
2.1. Description of national legislative instruments

**Belgium** - Royal Decree of 1 July 1994 on the holding of social identity cards.

**Denmark** - Act No 392 of 1993, amended by Act No 1061 of 1993 (see now statutory instrument 385 of 1994) on the employer's duty to inform employees of the conditions applicable to the contract or employment relationship. This is supplemented by Order No 417 of 23 June 1993 from the Ministry of Labour on the handling by the Complaints Board of matters relating to the above Act and on the compensation payable for non-compliance with the duty to provide information.

**Germany** - Article 1 of the Act on the adaptation of provisions of labour law to EC law of 20 July 1995, which entered into force on 28 July 1995. Act on the provision of evidence of the essential conditions applicable to an employment relationship (*NachwG*). NachwG does not apply to leased employees, trainees or crews of merchant ships. These groups were already provided for under the Employee leasing Act (AÜG) Article 1 § 11, the Vocational Training Act (BBiG) § 4 and the Seamen Act (SeemG) § 24.

**Greece** - Presidential Decree No 156 of 2 July 1994.


**France** - Decree No 94-761 of 31 August 1994 that supplemented the French Labour Code with provisions concerning the pay slip at the end of the month's work (Article R. 143-2) and the document provided to the employee upon engagement (Article R. 320-5).

**Ireland** - Terms of Employment (Information) Act 1994. Since then, two Statutory Instruments – S.I. No. 4 of 1997 and No. 49 of 1998 have been made under the Act.

**Italy** - Legislative Decree No 152 of 26 May 1997. The structure of the Decree-Law seeks to co-ordinate all the requirements of the Directive with the many different provisions already existing on the obligations to inform workers about working conditions.


**The Netherlands** - Law No 635 of 2 December 1993 on the implementation of the Directive of the Council of the European Community on the provision of information to employees on the conditions of their employment contract or employment relationship.
Austria - The principal means by which the Directive is transposed into Austrian Law is the Employment Contract Law Amendment Act (AVRAG) of 9 July 1993, which entered into force 1 January 1994. Existing legislation on the employers obligation to inform was retained. The necessary adjustments were made by either re-enacting legislation with amendments (HGHAG), making specific reference to § 2 AVRAG or by retaining more favourable provisions.

Portugal - Decree-Law 5/94 of 11 January 1994

Finland - Amendment to the Contracts of Employment Act, entered into force 1 January 1994.

Sweden - Amendment to the Employment Protection Act (LAS), entered into force 1 January 1994.


2.2. The scope (Article 1)

The Directive applies to every paid employee having a contract and/or employment relationship defined by the law in force in each Member State. The definition of the terms "employee", "contract" and "employment relationship" is left to national legislation. It is therefore necessary to analyse whether the legislation implementing the Directive has the same scope as the general Labour law provisions in the different Member States or whether, on the contrary, exceptions have been introduced which limit application to only part of the scope of the law in question.

Article 1(2)(a) allows Member States not to apply the Directive in cases where contracts or employment relationships last less than one month or where the working weeks is less than 8 hours. The Directive also allows for an exemption where the contract or employment relationship is of a casual and/or specific nature that can be justified objectively.

Belgium – The Royal Decree provides for two types of social identity cards, A and B, and all workers receive one or the other of these cards. Belgian law does not make use of the possible derogation in Article 1(2).

Denmark – The duty to inform applies to all employment relationships with a total duration of more than one month and where the weekly working time exceeds more than 8 hours. An exception is made for seamen, who are covered by a special Act (Act 1004 of 1992). The Act gives preference to collective agreements that already fulfil the provisions of the Directive. The Act gives the possibility for the Minister of Labour to decide that employees having casual work or work of a specific nature, can be excluded from the scope of the Act.

Germany – According to §1 the scope of the NachwG encompasses all employees in the private and public sectors, that is persons who are obliged to
carry out work for another party under private-law or equivalent contract. Germany has excluded two groups of people from the scope:

1. Employees who are taken on as a temporary help or to carry out occasional work not exceeding one month.

2. Employees, whose tasks involve household work, bringing up children or providing nursing care in a family home.

**Greece** – Greek legislation lays down that the rules apply to all employees who have a contract or an employment relationship with an employer or a contractual relationship.

**Spain** – Article 8.5 of the TRET refers to the relevant scope when it states that the employer must advise the employee in writing, thus implicitly applying the Directive to the entire field of application of Spanish Labour Law, where the term "employee" encompasses anyone who provides paid services to another party under the organisation and management of the employer.

The employer is only obliged to give the information when the employment relationship exceeds four weeks. It has to be mentioned that the bulk of "non-standard" contracts in Spain, under other legal provisions, must always be recorded in writing, even when the information mentioned in the Directive is not required in such a document. Article 1.2 of Royal Decree 1659/1998 of 24 July exclude domestic staff and prisoners.

**France** – The provisions of the French Labour Code concerning information for employees apply to all employees. French law does not make use of the possible derogation in Article 1(2) of the Directive.

**Ireland** – The Act applies to "employees" who are defined in section 1(1) meaning persons who have entered into or work under "a contract of employment". The Act does not apply to employees who are normally expected to work for the employer for less than eight hours a week or employees who have been in the continuous service of the employer for less than one month. The Act gives permission for the Minister for Enterprise, Trade and Employment to exclude other classes of employment.

**Italy** – The Italian legislation imposes a general obligation to provide information in cases of employed work, whether public or private. Employment relationships with a total duration not exceeding one month and not exceeding eight hours per week are excluded. Furthermore the spouse, direct relations and in-laws up to the third level are excluded.

**Luxembourg** – According to Luxembourg law an employment contract has to be drawn up for every employee. The law does not make use of the possible derogation in Article 1(2) of the Directive.

**The Netherlands** – Article 1 of the Dutch Act provides for the insertion of a new Article 1637 f into the Dutch Civil Code, which applies to employment relationships governed by private law. The only exception from the obligation
to give information is if the employment contract relates to tasks exclusively or almost exclusively involving household work or the provision of personal services for a natural person for a period usually less than three days a week. In this case the employer is only obliged to provide information on request.

Article 2 of the Dutch Act states that it applies to employees of the government, regional and local authorities, district water boards and other statutory authorities. No exemptions are made for these categories.

**Austria** – AVRAG states that it shall apply to all employment relationships based on contracts under private law. According to Austrian Labour Law an employee is any person who, on the basis of an employment relationship, is required to carry out work for another person upon whom he/she is personally dependent for such employment.

Various employment relationships are specifically excluded from the scope of AVRAG. The exclusion of employment relationships with federal states (Länder), local government, regional and local authorities is settled by constitutional law which places the obligations regarding the implementation of the Directive on the Land authorities. The exclusion of employment relationships of agricultural or forestry workers is due to the fact that legislation regarding these workers is the responsibility of the Federal government with the Länder assuming responsibility for its implementation. With the exception of Burgenland, both the federal Government and all the rest of the Länder have incorporated the Directive into their employment relationships except for some minor modifications.

The exclusion of federal officials (also to be found in foundations, institutions and funds), who are party to an employment relationship under private law, is laid down by the Contract Officials Act (Vertragsbedienstetengesetz – VBG) as amended by the Contracts Officials Reform Act (Vertragsbedienstetenreformgesetz – VBRG) which regulates this area separately. If an employment relationship is excluded from the scope of VBG, it will fall under the AVRAG. In addition, domestic workers and household employees are covered by special legislation. The exclusion of homeworkers (Heimarbeiter) is due to the fact that homeworkers have as a matter of principle (1954 Supreme Court) not been regarded as employees.

**Portugal** – Decree-Law 5/94 applies to all employment contracts. Portuguese Labour Law has a broad definition of an employee and the Decree-Law does not exempt any employment relationship subject to a special regime (such as temporary workers, seamen, agricultural workers etc.).

**Finland** – The Finnish Contracts of Employment Act covers all employees engaged in paid work whether by written contract or otherwise. Certain laws, e.g. for seamen and apprenticeships, supersede this general Act if they contain specific provisions exempting them. Officials of the Finnish State and municipalities are not affected by the obligation to inform laid down in the Directive, as, under Finnish national law, they are not included within the notion of "employment relationship" as set out in Article 1 of the Directive.
Sweden – The LAS Act is a general Act that applies to employees in public or private services. An employer's obligation to inform does not apply to employment relationships of less than one month's duration.

Swedish legislation excludes the following special groups: employees whose duties and terms and conditions of employment are such that they may be deemed to occupy a managerial or comparable position; employees who are members of the employer's family; employees engaged in work in the employer's household; employees who have been assigned to public temporary work or sheltered employment.

United Kingdom – The right to receive a written statement applies to employees, defined as "an individual who has entered into work under a contract of employment". The term "contract of employment" is defined as a contract of service or apprenticeship, whether expressed or implied, whether oral or in writing. Employees who work wholly or mainly outside the United Kingdom are normally excluded as are seamen under a "crew agreement" approved by the relevant Secretary of State. Also excluded are employees whose employment lasts for less than one month.

2.3. Obligation to provide information (content) (Article 2)

Article 2(1) obliges an employer to inform the employee of the essential aspects of the contract or the employment relationship. As regards the content of the information Article 2(2) lists the following: (a) name and address of the employer and the employee, (b) place of work, (c) title, grade, nature of the work or a brief specification or description of the work, (d) date of commencement, (e) the expected duration, if time limited, (f) the rights to paid annual leave, (g) the length of the periods of notice, (h) the remuneration and frequency of payment, (i) the length of the normal working day or week and (j) where appropriate, collective agreements which apply. According to Article 2(3) the information may, where appropriate, be given in the form of a reference to laws, regulations and administrative or statutory provisions or collective agreements.

Belgium - The Decree does not refer to any text requiring the employer to inform the employee in writing of periods of notice to be adhered to by the employer and the employee in the event of termination of the employment contract or relationship (Article 2(2)(g)). The Decree has not implemented the Directive in respect of information on the frequency of payment of remuneration (Article 2(2)(h)).

Denmark - According to Article 2(1) an employer is obliged to notify an employee to whom the Directive applies of the essential aspects of the contract or employment relationship. As the Danish provisions require that the employer provide the employee with all the information mentioned in Article 2(2), the Article can be said to be implemented.

Germany – Under § 2(1) of NachwG, the employer must set down in writing the essential contractual conditions, sign this written record and hand it over to the employee. Corresponding requirements are laid down in the other
relevant Acts except in AÜG (Employee Leasing Act). Article 2(1) has been implemented except for temporary employment relationships.

**Greece** – Implemented by Article 2 of the Decree in conformity with the Directive.

**Spain** - Article 2(1) is implemented by means of Article 8.5 of the TRET and Article 2.1 of the Royal Decree, where it is stated that the employer must inform the employee about the essential aspects of the contract and the main terms of the employment relationship.

Spain has complied with Article 2(2) by Article 2.2 in Royal Decree 1659/1998 of 24 July in which the specific items of written information are laid down.

**France** - Article 2(2)(b) of the Directive states that information shall be given about the place of work. Article R 143-2 only states that the name of the establishment to which the employee is assigned should be mentioned.

Article 2(2)(f) and (g) of the Directive state that information is to be given to the employee on the amount of paid leave and the length of periods of notice. However, there are no requirements for either the pay slip or the document provided to the employee upon engagement to contain this information.

As the employer is not required to provide the employee with information on the number of hours of work to be performed, French legislation (Articles R 320-5 and R 320-2) does not comply with the Directive on the provision about the duration of work in Article 2(2)(i).

**Ireland** – Implemented by Section 3 of the Act in conformity with the Directive.

**Italy** – Implemented by Article 1(2) of the Decree in conformity with the Directive.

**Luxembourg** – Implemented by Article 4(2) and 6 of the Employment Contracts Act of 24 May 1989 and Article 6 of the Act of 19 May 1994 on temporary employment.

**The Netherlands** - Article 1 of the Act contains all the information listed in the Article 2(2) of the Directive. Therefore Article 2 can be regarded as implemented.

**Austria** - Article 2(2)(f) and (g) of the Directive have not been fully implemented in the VBG as amended by VBRG, as § 4(2) does not contain a provision on the amount of paid leave or lay down a requirement for the period of notice to be specified.

**Portugal** - The Portuguese implementation in Article 3 of the Decree Law is in conformity with the Directive. It even includes an obligation for the employer to inform the employee of any right or obligation existing in the
employment contract, which makes the provision more favourable for employees than the Directive's provisions.

**Finland** - The requirements of Article 2 have been implemented in Finnish legislation (Section 4(3) of the Act) in a more general way than the wording of the Directive, i.e. the employer must provide the employee with a written statement of "the main aspects of the employee's duties", whereas the Directive Article 2(2)(c) states: title, grade, nature of the work or a brief specification or description of the work.

**Sweden** – Implemented by Article 6a of the Act in conformity with the Directive.

**United Kingdom** - The Courts have drawn a distinction between "mandatory terms" and "non-mandatory terms". Particulars as to the parties, commencement of employment, continuity of employment, rate of pay, interval of payment, notice requirement, job title, non-permanent employment and place of work are regarded as "mandatory terms" whereas the particulars as to hours of work, holidays, sickness and pensions are regarded as "non mandatory".

2.4. **Means of information (Article 3)**

According to Article 3(1) employees have, within two months of the date of engagement, the right to receive the information required on all the points in Article 2(2). The employee may receive the information in the form of a written contract of employment and/or a letter of engagement or one or more written documents, provided that one of these documents contains at least all the information in article 2(2) (a), (b), (c), (d), (h) and (i). If the information is not given in one of the above documents the employer is obliged to give the employee a written declaration containing the information (Article 3(2)). Article 3(3) states that when the employment relationship ends within two months of commencement of employment, the obligation to inform within this period still applies.

**Belgium** - According to Belgian legislation the employee has to be supplied with a copy of the application form for a social identity card. According to Article 6 of the Royal Decree this application must contain all the compulsory information listed in Article 2 of the Directive. The employer or his representative must (Article 8) give the application to the employee "before the first work".

The provision seems to have been properly implemented. However, it is uncertain whether the application form is applied in all sectors as the implementing Ministerial Decree of 22 December 1994 has restricted it temporarily to employers and workers in the building industry.

**Denmark** - Article 3 of the Directive is implemented in Section 2(2) and (3) of Act No 392 of 1993, which lays down that the information can be provided in the following documents; a written declaration, a written employment contract, an engagement letter or one or more other documents, where one of the document contains at least all the information referred to in Article
2(2)(c). The time limit is one month after commencement of the employment relationship.

**Germany** - According to § 2(1) of the NachwG the employer must, within a period of no more than one month following the agreed date of commencement of an employment relationship, set down in writing the essential contractual conditions, sign the written record and hand it over to the employee. As regards leased employees the AÜG § 11(1) states that the employer must provide the employee with a written record of the required information prior to the commencement of the employment relationship. As regards trainees the BBiG requires the written record to be handed over without delay. All the provisions are more stringent than the minimum requirements of Article 3(1) of the Directive. The application of Article 3(1) and (2) of the Directive to seamen by means of the SeemG § 24 does not lay down any time limit for the employer.

**Greece** - According to Article 3(1) of the Greek Decree employees have the right – within two months of engagement - to receive the necessary information on all the matters listed in Article 2(2) of the Directive in the form of a written contract and/or letter of engagement or one or more other written documents, where one of these documents contains at least all the information referred to in Article 2(2)(a), (b), (c), (d), (h) and (i) of the Directive. If the employment comes to an end in less than two months, the information must nevertheless be provided before the employment relationship ends.

**Spain** – Article 5 of the Royal Decree provides that the employer – where the written employment contract does not already contain the information - has to supply the employee with the relevant information (aspects of the contract or employment relationship, modifications and additional information on detachment) in a written declaration signed by the employer or in one or more other written documents, where one of these documents contains at least all the information referred to in Article 2(2)(a), (b), (c), (d), (h) and (i) of the Directive. According to Article 6(1) of the Royal Decree the information must be given within two months of the beginning of the employment relationship. If the employment comes to an end in less than two months, the information must nevertheless be provided before the employment relationship ends, Article 6.4. of the Royal Decree.

**France** - French legislation (Article L 143-2 and 143-3) requires the employer to give the employee two documents: the pay slip at the end of the first month's work and a document of engagement "upon engagement". The French rules comply with the Directive as regards the provision of written information within the time limit. However, as mentioned under the examination of the implementation of Article 2(2) above, the documents do not satisfy all the requirements under (b), (f), (g) and (i).

**Ireland** - Section 3(1) of the 1994 Act provides that an employer shall give or cause to be given to the employee a statement in writing containing the information listed in Article 2(2) not later than two months after the
commencement of employment. Section 3(2) requires that the statement shall still be given even when the employee's employment ends before the end of the period within which the statement is required to be given.

**Italy** - Article 1(2)(a) of the Italian law allows all three methods of communication; written contract, letter of engagement or any other written document. The document is to be provided to the employee within 30 days of engagement. If the employment relationship terminates within 30 days of engagement, the employee must be provided, at the time of termination, with a written statement with the required information.

**Luxembourg** - According to Article 4 of the amended law of 24 May 1989 the employment contract must be drawn up in writing and provided to the employee no later than the commencement of employment.

**The Netherlands** - Article 1(2) of the Dutch Act provides that the information need not be provided, if it has been set out in a written employment contract or in a statement. Article 1(3) provides that the employer shall provide the written record within one month of commencement of employment or before the end of any contract running for a shorter period.

**Austria** - The provision is implemented by means of AVRAG § 2(1) under which the employer must without delay (meaning a few days) provide the employee with a written record of the essential rights and obligations when an employment relationship comes into existence. This provision is more favourable than Article 3(1) of the Directive.

According to §2 subpara. 1 of the HGHAG (*domestic staff and household employees*), §7 of the LAO (*Vienna agricultural employment regulations*) and §4 subpara. 1 of the VBG (*federal officials*) as amended by VBRG, the employee shall be provided with a written record when the employment relationship is entered into.

**Portugal** - Article 4 of the Decree-Law provides that written documentation should be handed over not later than sixty days after the commencement of employment. A written employment contract or a written declaration from the undertaking to enter into a contract of employment is obligatory with regard to information referred to in Article 2(1) of the Directive. Portuguese legislation requires all documents to be signed by the employer.

**Finland** - According to Article 4(4) of the Contracts of Employment Act a declaration of the main conditions of the employment relationship (in accordance with the list in Article 2(2) of the Directive) may be given in one or more documents, or by reference to a law or collective agreement within two months of the beginning of the employment relationship, or, if the employment relationship comes to an end before this period, at the end of the relationship. There is no obligation to inform where the information is already contained in a written contract of employment.

**Sweden** - According to Article 6a of the Employment Protection Act (LAS), the information must be provided in writing within one month of
The commencement of employment. The means of information is left to the employer, although the obligation is still subject to the sanction of damages.

**United Kingdom** - Sections 1(1), (2) and (6) of the 1996 Act and Article 33(1) and (2) of the 1996 Order provide that the employer shall give to the employee a "written statement of particulars of employment" not later than two months after the beginning of employment. The statement may be given in instalments, but the particulars as to the names of the employee and employer, the date the employment began and the matters specified in (a), (b), (c), (d), (i), (f) and (h) in section 1(4) of the 1996 Act and Article 34(4) of the 1996 Order must be contained in a single document.

### 2.5. Expatriate employees (Article 4)

Article 4 concerns employment abroad of a duration of at least one month. This requirement for firms which, in accordance with the principle of freedom of movement of persons and services, post their employees abroad contributes to the harmonisation of the legislation of the Member States. The employee must be handed at least a written declaration which, besides the information mentioned in Article 2(2), contains the following information: a) the duration of the employment abroad and b) the currency to be used for the payment of remuneration. Where appropriate c) the benefits in cash or kind attendant on the employment abroad and d) the conditions governing the employee’s repatriation should be included.

The information referred to in paragraph 1 b) and c) may, according to Article 4(2) be given in the form of references to laws, regulations and administrative or statutory provisions or collective agreements governing those particular points.

**Belgium** - Article 5(3) of the Royal Decree lays down that the application form for the social identity card must give the details listed in Article 4 of the Directive, where the employee is to perform work for at least one month abroad. According to the Belgian provision the written document has to be given to the employee "before the first work".

**Denmark** – Implemented by Section 3 of the Act in accordance with the Directive. Additionally the Danish Act provides that information should be given on whether steps have been taken to obtain necessary attestations concerning the expatriation.

**Germany** – Implemented by NachwG § 2(2), AÜG § 11(1) and SeemG § 24(2) in accordance with the Directive. The BBiG (Vocational Training Act) does not contain any provision corresponding to Article 4(1). The reason for this is probably that vocational training within the meaning of the law is usually provided in Germany.

**Greece** - Article 4 of the Directive is copied into Greek legislation (Article 4).

**Spain** - Implemented by Article 3 of the Royal Decree in accordance with the Directive. According to the Spanish provision the employer is always obliged to provide information about the benefits in cash or kind attendant. The
information must be given to the employee before his or her departure (Article 6.2 of the Royal Decree).

**France** - Article 320-5(3) of the French decree requires the employer to specify in the document of engagement the information on the four items referred to in Article 4(1) of the Directive.

However, French law does not specify that the documents containing the information must be in the employee's possession before his/her departure, but only states that the document is to be given to the employee upon engagement.

The Directive lays down that the employee should have the documents referred to in Article 3 before his/her departure, meaning that the employee should have all the information referred in Article 2(2) (supplemented by special references to expatriation) before leaving for employment abroad. According to French law most of this information is set out on the pay slip which the worker receives at the end of the first month's work, where the employee might in many cases have already left for employment abroad.

**Ireland** - Implemented by Section 4 of the 1994 Act in accordance with the Directive.

**Italy** - In general implemented in accordance with the Directive by Article 2 of the Italian law. The Italian law has in Article 5(c) provided that the obligation to provide information to expatriate workers under Article 2 shall not apply to staff assigned to diplomatic representations and dependent offices.


**The Netherlands** – Implemented by Article 1(1)(k) of the Act in accordance with the Directive. Additionally the Dutch law provides that information should be given on accommodation arrangements and the applicability of Netherlands social insurance legislation or details of the bodies responsible for implementing this legislation.

**Austria** – Implemented by §2(3) of the AVRAG in accordance with the Directive. The VBG (*vocational training*) and the HGHAG (*domestic help and households*) do not apply to persons abroad and Article 4 of the Directive has thus not been incorporated into these laws.

**Portugal** - Article 5 of the Portuguese Decree only mentions three of the 4 details required in the documentation to be handed over (duration of employment abroad, currency used for payment and conditions governing the employee's repatriation). Benefits in cash and kind attendant on employment abroad are omitted.

**Finland** - Section 4(5) of the Finnish Act has implemented Article 4 of the Directive in a way that imposes no obligation on the employer to provide the
employee with information on the benefits in cash or kind attendant on the employment abroad and the conditions governing the employee's repatriation.

**Sweden** - According to Article 6a(7) of the Swedish Employment Protection Act, the employer must provide the employee with a written declaration of the conditions applying if the employee is posted abroad in cases where such posting is to last for a period of more than one month. However, the provision does not mention the content of the information that has to be given. The content is only described in the Government Bill, 1993/94:67. This states that the declaration must be provided before departure and it must include at least the following: the duration of employment abroad, the currency to be used for payment or remuneration, the benefits in cash or kind attendant and conditions governing the employee's repatriation.

**United Kingdom** - Generally implemented according to the Directive by Section 1(4)(k) of the 1996 Act and Article 33(4)(k) of the 1996 Order.

2.6. **Modification of aspects of the contract or employment relationship (Article 5)**

Article 5 states that the employer must inform an employee in writing of any change in the details referred to in Article 2(2) and 4(1) at the earliest opportunity and not later than one month after the entry into effect of the change in question. The notification of change is not compulsory in the event of a change in the laws etc. or a collective agreement cited in the documents.

**Belgium** – Implemented by Article 8 of the Royal Decree.

**Denmark** - Implemented by Section 4 of the Danish Act.

**Germany** - Implemented in German law by NachwG §11(1) and §3, SeemG §24(5), AÜG §11(1) and BBiG §4(4).

**Greece** - Implemented by Article 5 of the Greek Decree.

**Spain** - Implemented by Article 4 of the Royal Decree. According to Article 6.3 the employer must give the information on the modification to the employee not later than one month after the date of entry into effect of the modification.

**France** - The French requirement in Article 320-5(3) to draft and supply details in writing in the event of amendments to the employment contract concerns only the employment contracts of expatriate employees.

**Ireland** - Implemented by Section 5 of the Irish Act.

**Italy** - Implemented by Article 5 of the Italian Decree.

**Luxembourg** - Luxembourg law (Article 4(4)) complies with the Directive and goes further when requiring that information about the amendments must be given to the employee no later than when the amendments take effect.
The Netherlands – Implemented by Article (3) and Article II(6) of the Dutch Act.

Austria - Article 5 of the Directive is implemented properly in the area covered by AVRAG (§ 2(6)) and VBG (§4(2)) as amended by VBRG. However, HGHAG (§ 2(1) third sentence) does not state clearly the period within which the employer must meet his obligations to inform about amendments but it is understood that according to §2 subpara. 1, information about any amendments or additions has to be handed over to the employee when agreed upon.

Portugal - Implemented by Article 6 of the Portuguese Decree-Law.

Finland - Implemented by Section 4(6) of the Finnish Act.

Sweden - Generally implemented by Article 6a, paragraph 3 of the Swedish Act in accordance with the Directive. The Swedish Act uses the expression "if the conditions governing the employment relationship are modified by means of decision by the employer or under a agreement between the employer and employee".

United Kingdom – Implemented by Section 4 of the 1996 Employment Rights Act and Article 36(1) of the 1996 Order.

2.7. Form and proof of the existence of a contract or employment relationship and procedural rules (Article 6)

The Article states that the Directive shall be without prejudice to national law and practice concerning the form of the contract or employment relationship, proof as regards the existence and content of a contract or employment relationship and the relevant procedural rules.

This provision poses no problems of implementation and has generally not been explicitly implemented. With regard to the proof, see under section 3 Court of Justice Case Law.

2.8. More favourable provisions (Article 7)

Article 7 the Directive allows Member States to apply or to introduce laws, regulations or administrative provisions which are more favourable to employees and to encourage or permit the application of agreements which are more favourable to employees.

Article 7 poses no problems of implementation as the principle of "more favourable treatment" already exists in most Member States. The Dutch Act contains a specific reference to the principle in Article II(8), where it is provided that more detailed requirements may be laid down by means of generally binding provisions.

2.9. Defence of rights (Article 8)

Article 8 of the Directive contains the provisions on defence of rights. According to Article 8(1) Member States must introduce into their national
legal systems such measures as are necessary to enable all employees who consider themselves wronged by failure to comply with the obligations arising from the Directive to pursue their claims by judicial process, possibly after recourse to other competent authorities. Under Article 8(2) the Member States may provide that, in the event of failure to comply with the obligation to provide information, the employee must first notify the employer. If, within 15 days of that notification, the employer has not replied, the employee may pursue his rights by judicial process, possibly after recourse to other competent authorities.

Despite the fact that the Directive does not require Member States to lay down necessary measures to be applied in the event of failure to comply with the provisions in the Directive the Member States are obliged, in accordance with the first paragraph of Article 10 and the third paragraph of Article 249 of the Treaty (as amended by the Treaty of Amsterdam), to take all measures necessary to guarantee the application and effectiveness of Community Law.

**Belgium** - The Royal Decree contains no provisions regarding penalties for failure to comply with the requirement to provide information to the employee in writing.

**Denmark** - According to Section 5 of the Danish Act there is a special "Labour Market Appeals Board" which deals with alleged violations of the Act.

According to Article 6 the employee may obtain compensation if the employer has violated the Act by bringing the case before the ordinary courts. In practice, the typical sanction is compensation equivalent to 4 weeks' salary. There has been a judgment of 30 October 1997 by the Supreme Court on the level of compensation/sanction. The Court changed the level of compensation to DKr 5 000 in cases where the infringement of the information requirement had no real importance and DKr 10 000 in cases where it had led to uncertainty. If there are aggravating circumstances the level of compensation can be higher.

**Germany** - AÜG § 16(3) and BBiG § 99(2) provide for fines in the event of failure to provide a written record of contract conditions. The NachwG does not provide for any specific penalties. This means that the general provisions of German civil law and the rules of civil procedure apply, under which an employer may assert his/her rights under the NachwG, SeemG, AÜG and BBiG in the courts for claims for performance (to have a written record or to have it corrected) and for claims for damages, if the employee suffers a detriment as a result of failure by the employer to comply with his obligation.

**Greece** - An appeal to an administrative tribunal may be made within 20 days.

Article 6 of the Greek law states that if the employer does not give the employee the documents referred to in Article 3, the employment contract is nevertheless valid. Article 7 on penalties sets out the penalties to be imposed by the labour inspectorate when infringements have been detected. They are...
divided into three categories depending on whether the employer is an individual or a company and range from DRA 30 000 to DRA 500 000.

**Spain** - An employer who does not fulfil the obligation to provide the required information may be sanctioned by the employment administration, either as a result of a complaint from the affected employee, or because the labour inspectors have noticed such omissions. The general provisions concerning the infringement of labour law regulations apply. Sanctions take the form of fines of varying amounts, depending on whether the offence is minor, serious or very serious. Failure to provide information is generally considered to be a minor offence.

With regard to redress through the courts there are no specific procedures for demanding the written information mentioned in Article 8(5) TRET, since the legal procedure for dealing with employment issues refers to substantial breaches of the employers duty to comply, not to the lack of written information. However, the employee may take action, under the ordinary provisions of the Labour code for failure to comply.

**France** - Any employee working in France may bring an action before the Courts usually the Conciliation Board, to assert his right to information on the various aspects of the employment contract.

**Ireland** – Under section 7 of the Irish Act a complaint that an employer has not fulfilled his obligation to inform, may be presented within 6 months to a "Rights Commissioner". The Rights Commissioner must give the parties an opportunity to be heard and to present any evidence relevant to the complaint. The Rights Commissioner is further obliged to give a written recommendation in relation to the complaint and must communicate the recommendation to the parties. The recommendation may declare that the complaint is not well founded or confirm that there is an omission or inaccuracy in the statement and/or require the employer to fulfil his obligation and/or order the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding four weeks remuneration. An appeal against a recommendation of a Rights Commissioner may be taken to the Employment Appeals Tribunal within 6 weeks. A further appeal, on a point of law, may be taken to the High Court.

**Italy** - Where the employer breaches his duty to inform the Italian rules provide that the employee may first ask the provincial labour office to order the employer to provide the information required by law within 15 days.

The Italian legislation (Law No 608/96) lays down precise penalties for failure by the employer to provide information. These penalties apply where the employer fails to react to a request issued by the provincial labour office at the request of the employee. The size of the penalties depends on the seriousness of the failure. Failure or delay in providing the information document is regarded as more serious (penalty between LIT 500 000 and LIT 3 million per employee concerned) than omissions or inaccuracies in the information requested (penalty of LIT 100 000 to LIT 500 000).
Luxembourg - Article 4(6) of the Decree states that "where one of the parties refuses to sign a written document in accordance with paragraph 2 of this article, the other party may, at the earliest on the third day following the request for signature of a written document, and no later than 30 days following the commencement of the employment, terminate the employment contract without giving notice and without giving compensation".

The Netherlands - Article 1(5) and II(7) of the Dutch Act provides that any employer who refuses to provide the information or written record or makes untrue statements therein shall be liable to pay damages to the employee for any wrong suffered by him as a result. No special procedural provisions have been enacted.

Austria - There are no specific provisions in the AVRAG implementing Art.8 of the Directive. Consequently, the general rules apply, which means that there are no penal, only civil law sanctions. The employee is able to enforce his or her claim to the issue of a "Dienstzettel" (written record of rights and obligations arising from the employment contract) at the labour court. Claims relating to provision of the written record of contractual conditions, additional information to make good any information that is incomplete and modifications to the written record in line with a different legal situation or altered facts and circumstances can, if necessary, be enforced by means of an action for relief.

In addition, § 23 of HGHAG provides that any infringement of its § 2 subpara 1 is subject to punitive sanctions. An employer who fails to issue a "Dienstschein" or who draws up a "Dienstschein" but fails to provide the employee with a copy, is deemed to be in violation of administrative rules.

Portugal - Article 8 of the Decree-law sanctions failure on the part of the employer to comply with the obligation to supply written information, imposing fines between ESC 35 000 to 450 000 for each affected employee. Failure is considered to be an infringement of Decree-law 491/85 of 26 November 1985 on labour offences and sanctions, which lays down that payment of fines does not exempt the employer from fulfilling the duty to inform.

Finland - There are no specific procedural provisions in the national implementing law, but the employee has the normal right to initiate court proceedings, requesting action for performance, declaratory action or breach of contract, if the employer has not fulfilled his obligation to inform.

According to Article 1 of the Finnish Act, the sanction may take the form of compensation for damages if the injury to the employee is the result of such neglect. If the information obligation is stipulated in collective agreements the infringements of the provision in the agreements must first be negotiated at the workplace. If there is no result, the infringement can be transferred to union level and finally to the Labour Court. The infringement of provisions in a collective agreement is sanctioned by the Labour Court by a special compensatory fine, which normally goes to the plaintiff (the trade union).
Sweden - Under Article 38 of the LAS, the employee, in cases where the employer is in breach of the obligation to inform, may sue for damages in court. Damages may consist of compensation for any loss suffered and for any personal suffering that results from the infringement of the law, both in material form and "general damages”.

United Kingdom - Section 11 of the 1996 Act provides that an employee may within three months after the employee has left the job in respect of which information is sought require reference to be made to an industrial tribunal to determine what particulars ought to have been included or referred to in the statement. The industrial tribunal may confirm the particulars as included or referred to in the statement, amend those particulars or substitute other particulars for them.

2.10. Final provisions (Article 9)

Article 9(1) requires Member States to adopt the laws, regulations and administrative provisions necessary to comply with the Directive or to ensure that the employers’ and workers' representatives introduce the required provisions by way of agreement. Article 9(2) requires the Member States to take the necessary measures to ensure that, in the case of employment relationships in existence upon entry into force of the provisions that they adopt, the employer gives the employee, within two months, the information requested. When Member States adopt the measures referred to in 9(1), such measures must contain a reference to this Directive or must be accompanied by such reference on the occasion of their official publication (Article 9(3)).

Generally this provision causes no problems of implementation. The European Court has ruled on the interpretation of Article 9(2) - see section 3: Court of Justice Case Law.

3. Court of Justice case law

There has been only one ruling by the European Court concerning Council Directive 91/533/EEC: In its Judgment of 4 December 1997 (C-253/96-C258/96) the Court ruled that:

(1) The notification referred to in Article 2(1) of 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, in so far as it informs an employee of the essential aspects of the contract or employment relationship and, in particular, of the points listed in Article 2(2)(c), enjoys the same presumption as to its correctness as would attach, in domestic law, to any similar document drawn up by the employer and communicated to the employee. The employer must none the less be allowed to bring any evidence to the contrary, by showing that the information in the notification is either inherently incorrect or has been shown to be so in fact.
(2) Individuals may rely on Article 2(2)(c) of Directive 91/533 directly before the national courts as against the State and any organisations or bodies which are subject to the authority or control of the State or have special powers beyond those which result from the normal rules applicable to relations between individuals, either where the State has failed to transpose the Directive into national law within the prescribed period or where it has not done so correctly. It is not open to a Member State to transpose Article 2(2)(c)(ii) of the Directive in such a way as to allow the employer, in every case, to confine the information to be notified to the employee to a mere job designation.

(3) Article 9(2) of the Directive, properly construed, does not preclude the Member States from exempting an employer from the obligation to give an employee written notification of the essential aspects of the contract or employment relationship, even at the employee's request, when those aspects are already set out in a document or contract of employment drawn up before the measures transposing the Directive entered into force.