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(Preparatory Acts)

COMMISSION

Proposal for a Council Directive on a form of proof of an employment relationship*COM(90) 563 final**(Submitted by the Commission on 5 December 1990)*

(91/C 24/03)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

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, faced with this development, certain Member States have considered it necessary to subject employment relationships to formal requirements; whereas these provisions are designed to provide employees with improved protection against infringements of their rights and to create greater transparency in the labour market;

Whereas the relevant legislation of the Member States differs considerably in such fundamental areas as the requirement to put the conclusion of an employment contract into writing or the obligation to provide written proof of an employment relationship;

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 none the less 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 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, in order to protect the interests of employees with regard to obtaining a written declaration, any substantive change in the contents of the declaration must be brought to the employee's attention in writing, particularly if he is sent to work abroad;

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

Whereas point 9 of Title I of the Community Charter of Fundamental Social Rights of Workers states that the conditions of employment of every worker of the European Community shall be stipulated in laws, a collective agreement or a contract of employment, according to arrangements applying in each country;

Whereas Article 117 of the Treaty provides for the Member States to agree upon the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained;

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

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

Article 2

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.

The employer shall sign the declaration and keep a copy.

2. The declaration referred to in paragraph 1 shall contain the following main elements of information:

- the identity of the parties,
- place of work,
- a description of the job and category of employment,
- the duration of the employment relationship and, if appropriate, the duration of the trial period, and the period of notice,
- working time and paid leave,
- remuneration and method of payment,
- the social security system applicable and, if appropriate, any supplementary scheme,
- a reference to the collective agreements applicable.

3. Employees shall receive written notification of any substantive change to the elements of information listed in paragraph 2, especially in cases where employees are required to work in another country; in such cases employees must be assured, before their departure, of receiving the written declaration provided for in paragraph 2, which in this case must contain the following supplementary information:

- the duration of employment abroad,
- the foreign currencies used for the payment of wages or salaries,
- any benefits attendant on employment abroad,

- if appropriate, the circumstances of return to the employee's home country.

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.

Article 4

This Directive shall not affect Member States' prerogative to apply or introduce laws, regulations or administrative provisions which are more favourable to employees.

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.

Article 6

1. Member States shall implement the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992, or shall ensure that the social partners establish the necessary provisions through agreement, without prejudice to the obligation on the Member States to achieve the results sought by this Directive.

2. Member States shall take the necessary measures to ensure that, for employment relationships which already exist when these provisions enter into force, the declaration for the employees referred to by this Directive is issued to them within six months of the date indicated in paragraph 1.

3. When Member States adopt these provisions, these shall contain a reference to this Directive, or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

4. Member States shall immediately inform the Commission of the measures adopted to comply with this Directive.

Article 7

This Directive is addressed to the Member States.