

## CPME Members' Briefing

25 July 2019

# Recent EU activities on employment and working conditions

## Background, processes, impact

### What this briefing is for

This briefing is to provide CPME members with the background information and relevant details on recent EU activities on employment and working conditions. It is to enable discussion and action in both national and CPME policies where relevant.

Please find a link to the previous CPME briefing on the employment dossiers [here](#).

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### Introduction

Over the past mandate, the European Commission has adopted a number of laws and policy commitments which affect employment rights in the EU. In the following paragraphs, there is an overview of the most relevant developments.

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## 1). Directive on transparent and predictable working conditions

### Content

The [Directive \(EU\) 2019/1152 on transparent and predictable working conditions in the European Union](#) is an initiative under [the European Pillar of Social Rights](#). The Directive aims to set new rights



for all workers, in particular by tackling insufficient protection for workers in precarious jobs, while limiting burdens on employers and maintaining labour market adaptability.

The Directive has a broad personal scope of application. It aims to ensure that these rights cover all workers in all forms of work, including those in the most flexible non-standard and new forms of work such as zero-hour contracts, casual work, domestic work, voucher-based work or platform work. It also comes with targeted provisions on enforcement, to make sure that workers in the workplace effectively benefit from these rights.

Regarding its material scope, the directive aims to assure workers' rights – among others – to:

- more comprehensive information on the essential right and obligations of the worker
- limit the length of probationary periods at the beginning of the job up to six months.
- seek additional employment, with a ban on exclusivity clauses and limits on incompatibility clauses,
- announce when work will take place with a reasonable period of advance notice, this is particularly related to workers with very variable working schedules, which are determined by the employer, as in the case of on-demand work,
- receive a written reply to a request to transfer to another more secure job,
- where employers are legally obliged to provide mandatory training, ensure it is free of cost to worker and takes place during working time where possible

### Relevance to CPME members

The Directive is applicable to all workers, including doctors and situations in which doctors are employers. It must be transposed into national law by 1 August 2022. National Medical Associations are invited to monitor the national implementation in particular of the following:

- In Article 1, paragraph 2, Member States are given the opportunity to exempt certain categories of civil servants and public emergency services from the scope. This may be applicable to some doctors, depending on the organisation of the individual healthcare system.
- The European Commission expects that Member States may implement the definition of 'worker' differently, as Article 1 paragraph 2 refers to national law as a decisive factor. Therefore, it may require further case law to better define the personal scope of the future Directive.
- Article 8 paragraph 2 sets a high threshold for prohibiting parallel employment, e.g. health and safety concerns. It is therefore not possible to conclude contracts with exclusivity clauses without any further justification.
- Article 9 of the Directive provides that shift work must be announced with reasonable advance notice. If there are changes to work schedules without reasonable advance notice, workers are eligible for compensation.
- Where employers are obliged by law or collective agreements to provide training to employees, Article 11 provides that this training must be free of cost to the worker, and be treated as working time, ideally also being carried out during the same.

The following provisions of the Directive may be of specific interest to doctors.

Purpose, subject matter and scope	
Recital 7	In its case law, the Court of Justice of the European Union has established criteria for determining the status of a worker. The interpretation of the Court



	of Justice of these criteria should be taken into account in the implementation of this Directive[...].
Recital 7a	It should be possible for Member States to provide, where justified on objective grounds, that certain provisions of this Directive are not to apply to certain categories of civil servants, public emergency services, the armed forces, police authorities, judges, prosecutors, investigators and other law enforcement services, given the specific nature of the duties that they are called on to perform or of their employment conditions.
Article 1, paragraph 2	This Directive lays down minimum rights that apply <b>to every worker in the Union, who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State</b> with consideration to the case-law of the Court of Justice of the European Union
	<b>Member States may provide, on objective grounds, that the provisions laid down in Chapter III shall not apply to civil servants, public emergency services, the armed forces, and to police authorities, judges, prosecutors, investigators and other law enforcement services.</b>
<b>Obligation to provide information</b>	
Article 3, paragraph 1	Member States shall ensure that employers are required to inform workers of the essential aspects of the employment relationship.
Article 3, Paragraph 2	The information referred to in paragraph 1 shall include at least the following: (a) the identities of the parties to the employment relationship; (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; (c) (i) the title, grade, nature or category of [...] work for which the worker is employed; or (ii) a brief specification or description of the work; (d) the date of commencement of the employment relationship; (e) in the case of a temporary employment relationship, the end date or the expected duration thereof; (ea) in the case of temporary agency workers, the identity of the user undertakings, when and as soon as known; (f) the duration and conditions of the probationary period, if any; (g) the training entitlement provided by the employer, if any; (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; (i) the procedure, including the formal requirements and the length of [...] notice periods to be observed by the employer and the worker if their employment relationship is terminated or, where the length of the [...] notice periods cannot be indicated when the information is given, the method for determining such [...] notice periods;



	<p>(j) the remuneration, including the initial basic amount, any other component elements, if applicable, indicated separately, the frequency and method of payment of the remuneration to which the worker is entitled;</p> <p>(k) if the work pattern is entirely or mostly predictable, the length of the worker's standard working day or week and any arrangements for overtime and its remuneration and, where applicable, for shift changes;</p> <p>(l) if the work pattern is entirely or mostly not predictable, the employer shall inform the worker about: (i) the principle that the work schedule is variable, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours; (ia) the reference hours and days within which the worker may be required to work; (ii) the minimum period of advance notice the worker shall receive before the start of a work assignment and, where applicable, the deadline for cancellation referred to in Article 9;</p> <p>(m) any collective agreements governing the worker's conditions of work or 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) where it is the responsibility of the employer, the identity of 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><b>Additional information for workers sent to another Member State or a third country</b></p>	
<p>Article 6, paragraph 1</p>	<p>Member States shall ensure that, where a worker is required to work in a Member State or third country other than the Member State in which he or she habitually works, the documents referred to in Article 4(1) : shall be provided before his or her departure and shall include at least the following additional information:</p> <p>(a) the country or countries in which the work abroad is to be performed and its anticipated duration;</p> <p>(b) the currency to be used for the payment of remuneration;</p> <p>(c) where applicable, the benefits in cash or kind attendant on the work assignment(s)[...];</p> <p>(d) information as to whether repatriation is provided for, and if so, the conditions governing the worker's repatriation.</p>
<p>Article 6, paragraph 2</p>	<p>Member States shall ensure that a posted worker covered by Directive 96/71/EC shall in addition be notified of:</p> <p>(a) the remuneration to which the worker is entitled in accordance with the applicable law of the host Member State</p> <p>(aa) where applicable, any allowances specific to posting and any arrangements for reimbursing expenditure on travel, board and lodging; [...]</p>
<p><b>Minimum duration of any probationary period</b></p>	
<p>Recital 19</p>	<p>[...]A substantial number of Member States have established a general</p>



	<p>maximum duration of probation of between three and six months, which should be considered reasonable. Exceptionally, it should be possible for probationary periods to last longer than six months where this is justified by the nature of the employment such as for managerial or executive positions or public service positions or where this is in the interest of the worker[...]</p>
Article 7, Paragraph 1.	<p>Member States shall ensure that, where an employment relationship is subject to a <b>probationary period as defined in national legislation and/or practice, that period shall not exceed six months [...]</b>.</p> <p>In the case of fixed-term employment relationships, Member States shall ensure that the length of such a probationary period is proportionate to the expected duration of the contract and the nature of the work.</p> <p>In the case of the renewal of a contract for the same function and tasks, the employment relationship shall not be subject to a new probationary period.</p>
<b>Employment in parallel</b>	
Article 8, Paragraph 2	<p><b>Member States may [...] lay down conditions for the use of incompatibility [...] restrictions [...] by employers, on the basis of objective reasons, such as health and safety, the protection of business confidentiality, the integrity of the public service or the avoidance of conflicts of interests.</b></p>
<b>Minimum predictability of work</b>	
Recital 14	<p>If it is not possible to indicate a fixed work schedule due to the nature of the employment, such as an on-demand contract, workers should be informed by their employer how their working time will be established, including the time slots in which they may be called to work and the minimum period of advance notice they should receive.</p>
Article 9, Paragraph 1	<p><b>Member States shall ensure that where a worker's work pattern is entirely or mostly not predictable the worker shall not be required to work by the employer [...] unless both of the following conditions are fulfilled:</b></p> <ul style="list-style-type: none"> <li>(a) the work takes place <b>within predetermined reference hours</b> and reference days [...] as referred to in Article 3(2)(1)(ia), and</li> <li>(b) the <b>worker is informed by his or her employer of a work assignment within a reasonable period in advance</b> established in accordance with national law, collective agreements or practice as referred to in Article 3(2)(1)(ii)</li> </ul>
Article 9, Paragraph 2	<p>Where one or both of the requirements laid down in paragraph 1 is not fulfilled, a worker shall have the right to refuse a work assignment without adverse consequences.</p>
Article 9, Paragraph 3	<p>Where Member States allow an employer to cancel a work assignment without compensation, Member States shall take the measures necessary, in accordance with national law, collective agreements or practice, to ensure that <b>the worker is entitled to compensation if the employer cancels after a specific reasonable deadline the work assignment previously agreed by the worker.</b></p>
Article 9,	<p>Member States may lay down modalities for the application of this Article, in</p>



Paragraph 4	accordance with demand national law, collective agreements and/or practice.
<b>Complementary measures for on- contracts</b>	
Article 9a, Paragraph 1	Where Member States allow for the use of on-demand or similar employment contracts, they shall take one or more of the following measures to prevent abusive practices: a) Limitations to the use and duration of on-demand or similar contracts b) A rebuttable presumption on the existence of an employment contract with a minimum amount of paid hours based on the average hours worked during a given period c) Other equivalent measures that ensure effective prevention of abusive practices. Member States shall inform the Commission of such measures.
<b>Mandatory training</b>	
Recital 11a	It should be possible for information on the training entitlement provided by the employer to take the form of information that includes the number of training days per year, if any, to which the worker is entitled and information about the employer's general training policy.
Article 11, Paragraph 1	<b>Member States shall ensure that where an employer is required by Union or national law or collective agreements to provide training to a worker to carry out the work for which he or she is employed, such training shall be provided cost-free to the worker, shall count as working time and, where possible, take place during working hours.</b>
<b>Horizontal</b>	
Article 12, Paragraph 1	Member States may allow social partners to maintain, negotiate, conclude and enforce 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.
<b>Non-regression and more favourable provisions</b>	
Article 19, Paragraph 3	This Directive is without prejudice to any other rights conferred on workers by other legal acts of the Union.

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## 2). Council Recommendations on access to social protection for workers and self-employed

### Content

Member States have agreed on [Recommendations on access to social protection for workers and the self-employed](#), as a further measure under [the European Pillar of Social Rights](#).

The Council recommendation mainly applies to “the branches of social protection which are often more closely related to the participation in the labour market and mostly ensure protection from loss of work-related income upon the occurrence of a certain risk. This Recommendation does not apply to the provision of access to social assistance and minimum income schemes. (Recital 8)”

## Relevance to CPME members

Council Recommendations are not legally binding but show a strong political commitment from Member States to establish minimum standards. Its focus on new forms of employment and more varied working careers could become increasingly relevant to doctors in light of trends such as ‘conciierge medicine’, where doctors are employed by practices which deliver services to patients on-demand immediate care against an annual fee. The Recommendations however fall short in some respects. For example, the [European Trade Union Conference \(ETUC\)](#) criticised it for failing to address the transferability of social protection when there is a change from the status as worker to self-employed or vice versa. In addition, the formal coverage of for self-employed has been weakened during negotiations, which ETUC fears creates a risk of Members States providing only minimum coverage. National Medical Associations are invited to make reference to the Council Recommendations in the context of national debates.

The following provisions of the Recommendation may be of specific interest to doctors.

Objectives and scope	
Article 1	Member States are recommended to provide access to adequate social protection to all workers and the self-employed in Member States, in line with this Recommendation and without prejudice to the powers of the Member States to organise their social protection systems.
Article 2	Member States are recommended to establish minimum standards in the field of social protection of workers and the self-employed, in line with this Recommendation.[..]
Article 3	This Recommendation covers the right to participate in a scheme as well as the build-up and take-up of entitlements. Member States are recommended, in particular, to ensure the following for all workers and the self-employed: (a) formal coverage (b) effective coverage (c) adequacy (d) transparency
Article 4	This Recommendation applies to workers and the self-employed, including people transitioning between either status or having both statuses, as well as people whose work is interrupted due to the occurrence of one of the risks covered by social protection.
Article 5	This Recommendation applies to the following branches of social protection, insofar provided in the Member States: (a) unemployment benefits; (b) sickness and health care benefits; (c) maternity and equivalent paternity benefits; (d) invalidity benefits; (e) old-age benefits and survivors' benefits; (f) benefits in respect of accidents at work and occupational diseases;
Article 7	The principles of formal coverage, effective coverage, adequacy and transparency defined in this Recommendation apply to all workers and to the self-employed, whilst acknowledging that different rules may apply for

	workers and for the self-employed
<b>Formal coverage</b>	
Article 11	Member States are recommended to ensure access to adequate social protection to all workers and the self-employed for all branches mentioned in Paragraph 5. In light of national circumstances, it is recommended to achieve this objective by extending and improving the formal coverage to: (a) all workers on a mandatory basis, regardless of the type of their employment relationship; (b) the self-employed, at least on a voluntary and where appropriate on a mandatory basis.
<b>Adequacy</b>	
Article 13	Where a risk insured by social protection schemes for workers and for the self-employed occurs, Member States are recommended to ensure that schemes timely provide an adequate level of protection to their members in line with national circumstances, upholding a decent standard of living, providing appropriate income replacement while always preventing those members from falling into poverty.  When assessing the adequacy, the Member State's social protection system as a whole needs to be taken into account.
<b>Implementation, reporting and evaluation</b>	
Article 19	[..]Member States are recommended to collect and publish where possible, reliable national statistics on access to the various forms of social protection, for example, broken down by labour market status (self-employed/employee), the type of employment relationship (temporary/permanent, part-time/full-time, new forms of work/standard employment), gender and age by [ADD date 24 months from the publication of the Recommendation].

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### 3). Directive on work-life balance for parents and carers

#### Content

With the [Directive \(EU\) 2019/1158 on work-life balance for parents and carers](#), the EU seeks to support the reconciliation of professional and private lives. The main aim is to close the gender gap by encouraging the participation of women in the labour market. The Directive applies to workers which is defined as in the Directive on transparent and predictable working conditions. The Directive provides, for full-time positions, adjusted for part-time, that

- fathers or, if applicable in national law, second parents will be able to take at least 10 paid working days of leave around the time of birth of a child. The level of pay for that leave should be at least equal to compensation for health-related absences. This right applies regardless of





length of service, however the level of pay can be determined by Member State according to the same.

- every worker has an individual right to 4 months of parental leave, from which 2 months are non-transferable between the parents and are paid. The level of payment and the age limit of the child will be set by Member States. Also, Member States may make eligibility and compensation dependent on length of service and grant employers limited options to postpone parental leave requests.
- workers caring for relatives in need of care or support due to serious medical reasons will be able to take 5 working days of carers' leave per year, subject to conditions set by Member States.
- all workers have the right to immediate absence in case of force majeure events linked to their family.
- all parents of young children or carers have the right to flexible working arrangements including the use of remote work, flexible working schedules or reduced working hours. Member States may make this right dependent on a length of service qualification of a maximum of 6 months.
- where workers make use of the rights established by the Directive, their employment rights are protected, for example, against dismissal. After an absence linked to one of the rights granted by the Directive, workers have the right to return to the same job or an equivalent with no less favourable terms than previously. However, Member States may adjust entitlements to social security such as pension rights for those periods.

### Relevance to CPME members

The Directive is applicable to all workers, including doctors and situations in which doctors are employers. It must be transposed into national law by 2 August 2022. While there are no sectoral exemptions for the application of the Directive, several provisions grant Member States' and by extension employers' discretion in determining the details. National Medical Associations are invited to monitor the national implementation of the Directive and ensure that the transposition for the medical sector does not dilute rights. National Medical Associations are also invited to provide information to doctors on the Directive's provisions, in particular where they are more favourable than current laws. In this, it is recommended to engage especially with the main target groups of the Directive, e.g. women and junior doctors.

<b>Subject matter</b>	
Article 1	[..] this Directive provides for individual rights related to the following: (a) paternity leave, parental leave and carers' leave; (b) flexible working arrangements for workers who are parents, or carers.
<b>Paternity leave</b>	
Article 4	1. Member States shall take the necessary measures to ensure that fathers or, where and insofar as recognised by national law, equivalent second parents, have the right to paternity leave of 10 working days that is to be taken on the occasion of the birth of the worker's child. Member States may determine whether to allow paternity leave to be taken partly before or only after the birth of the child and whether to allow such leave to be taken in flexible ways.



	<ol style="list-style-type: none"> <li>2. The right to paternity leave shall not be made subject to a period of work qualification or to a length of service qualification.</li> <li>3. The right to paternity leave shall be granted irrespective of the worker's marital or family status, as defined by national law.</li> </ol>
<b>Parental leave</b>	
<p>Article 5</p>	<ol style="list-style-type: none"> <li>1. Member States shall take the necessary measures to ensure that each worker has an individual right to parental leave of four months that is to be taken before the child reaches a specified age, up to the age of eight, to be specified by each Member State or by collective agreement. That age shall be determined with a view to ensuring that each parent is able to exercise their right to parental leave effectively and on an equal basis.</li> <li>2. Member States shall ensure that two months of parental leave cannot be transferred.</li> <li>3. Member States shall establish a reasonable period of notice that is to be given by workers to employers where they exercise their right to parental leave. In doing so, Member States shall take into account the needs of both the employers and the workers.  Member States shall ensure that the worker's request for parental leave specifies the intended beginning and end of the period of leave.</li> <li>4. Member States may make the right to parental leave subject to a period of work qualification or to a length of service qualification, which shall not exceed one year. In the case of successive fixed-term contracts within the meaning of Council Directive 1999/70/EC <sup>(14)</sup> with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.</li> <li>5. Member States may establish the circumstances in which an employer, following consultation in accordance with national law, collective agreements or practice, is allowed to postpone the granting of parental leave for a reasonable period of time on the grounds that the taking of parental leave at the time requested would seriously disrupt the good functioning of the employer. Employers shall provide reasons for such a postponement of parental leave in writing.</li> <li>6. Member States shall take the necessary measures to ensure that workers have the right to request that they take parental leave in flexible ways. Member States may specify the modalities of application thereof. The employer shall consider and respond to such requests, taking into account the needs of both the employer and the worker. The employer shall provide reasons for any refusal to accede to such a request in writing within a reasonable period after the request.</li> </ol>



	<ol style="list-style-type: none"> <li>7. Member States shall take the necessary measures to ensure that when considering requests for full-time parental leave, employers shall, prior to any postponement in accordance with paragraph 5, offer, to the extent possible, flexible ways of taking parental leave pursuant to paragraph 6.</li> <li>8. Member States shall assess the need for the conditions of access to and the detailed arrangements for the application of parental leave to be adapted to the needs of adoptive parents, parents with a disability and parents with children with a disability or a long-term illness.</li> </ol>
<b>Carers' leave</b>	
Article 6	<ol style="list-style-type: none"> <li>1. Member States shall take the necessary measures to ensure that each worker has the right to carers' leave of five working days per year. Member States may determine additional details regarding the scope and conditions of carers' leave in accordance with national law or practice. The use of that right may be subject to appropriate substantiation, in accordance with national law or practice.</li> <li>2. Member States may allocate carers' leave on the basis of a reference period other than a year, per person in need of care or support, or per case.</li> </ol>
<b>Payment or allowance</b>	
Article 8	<ol style="list-style-type: none"> <li>1. In accordance with national circumstances, such as national law, collective agreements or practice, and taking into account the powers delegated to the social partners, Member States shall ensure that workers who exercise their right to leave provided for in Article 4(1) or Article 5(2) receive a payment or an allowance in accordance with paragraphs 2 and 3 of this Article.</li> <li>2. With regard to paternity leave as referred to in Article 4(1), such payment or allowance shall guarantee an income at least equivalent to that which the worker concerned would receive in the event of a break in the worker's activities on grounds connected with the worker's state of health, subject to any ceiling laid down in national law. Member States may make the right to a payment or an allowance subject to periods of previous employment, which shall not exceed six months immediately prior to the expected date of the birth of the child.</li> <li>3. With regard to parental leave as referred to in Article 5(2), such payment or allowance shall be defined by the Member State or the social partners and shall be set in such a way as to facilitate the take-up of parental leave by both parents.</li> </ol>
<b>Payment or allowance</b>	
Article 9	<ol style="list-style-type: none"> <li>1. Member States shall take the necessary measures to ensure that workers with children up to a specified age, which shall be at least eight years, and</li> </ol>



	<p>carers, have the right to request flexible working arrangements for caring purposes. The duration of such flexible working arrangements may be subject to a reasonable limitation.</p> <p>[...]</p> <p>4. Member States may make the right to request flexible working arrangements subject to a period of work qualification or to a length of service qualification, which shall not exceed six months. In the case of successive fixed-term contracts within the meaning of Directive 1999/70/EC with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.</p>
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#### 4). Regulation establishing a European Labour Authority

##### Content

As a further measure under the European Pillar of Social Rights, [Regulation \(EU\) 2019/1149 establishing a European Labour Authority](#) sets up a European Labour Authority (ELA) to help individuals, businesses and national administrations to exercise their rights to free movement and to ensure fair labour mobility. In specific, the ELA will

- provide information to citizens and business on opportunities for jobs, apprenticeships, mobility schemes, recruitments and training, as well as guidance on rights and obligations to live, work and/or operate in another Member State of the EU.
- support cooperation between national authorities in cross-border situations, by helping them ensure that the EU rules that protect and regulate mobility are easily and effectively followed.
- provide mediation and facilitate solutions in case of cross-border disputes, such as in the event of company restructuring, between national authorities /involving several Member States.
- provide national authorities with operational and technical support to exchange information, develop day-to-day cooperation routines, carry out inspections and, if necessary, settle disputes.
- ensure synergies with existing EU agencies by relying on their expertise in terms of skills forecasting, health and safety at work, the management of company restructuring and tackling undeclared work
- integrate several existing committees and networks, thereby simplifying cooperation amongst EU countries and eliminating fragmentation.

The ELA will be established in Bratislava and is expected to be fully functioning by 2023. To facilitate the implementation, the European Commission will set up an advisory group composed of key stakeholders to comment on the practical aspects of the future functioning of the ELA.

##### Relevance to CPME members

The ELA can potentially support individual doctors in relation to the cross-border transfer of social security entitlements, rights and obligations and can be consulted by National Medical Associations for such questions. The ELA will not actively monitor or enforce the implementation of legislation,



such as the Working Time Directive 2003/88/EC, therefore its impact on policy remains to be determined.