

The Transparent and Predictable Working Conditions Directive (TPWCD) and potential exclusion of public service workers

EPSU/EUROMIL/EuroCop project on Trade union
rights

5th regional seminar 11 May 2022

EUROPEAN PUBLIC SERVICE UNION

The directive

- The [TPWCD](#) was adopted in Dec 2019, deadline for transposition at national level is **1 August 2022**
- Rationale: Some workers get no or incomplete or out-of-date information on their working conditions (2-3 million); weak enforcement; more precarious and unpredictable jobs (part-time, temporary, on demand and platform work)
- It updates the Written Statement Directive providing new rights to information in a shorter time i.e. 7 days (2-3 million workers)
- It adds new rights– chapter III (200 million workers)
- Last minute amendment introduced possible exemption for millions of public sector workers from Chapter III
- Exemption opposed by EPSU, Euromil and EuroCop, to no avail

Chapter III- new minimum requirements

8. Maximum duration of probationary period -6 months
9. Parallel employment
10. Minimum predictability of work – to know in advance working time slots
11. Complementary measures for on-demand contracts
12. Transition to another “more stable” employment
13. Cost-free mandatory training to count as working time and if possible during working hours
14. Collective agreements to differ from articles 8-13

Potential to exclude from Chapter III

Unprecedented scope for possible exemptions

- Article 1.6. MS may provide, on objective grounds, that the provisions laid down in Chapter III are not to apply to *civil servants*, public emergency services, the armed forces, police authorities, judges, prosecutors, investigators or other law enforcement services.
- Recital (9): It should be possible for Member States to provide, where justified on objective grounds, for **certain provisions** of this Directive not to apply to *certain categories of civil servants*, [...] , given the **specific nature** of the **duties** that they are called on to perform or of their **employment conditions**.

Limits on exemptions and guidance on objective grounds

- ✓ Recital (9):
 - **certain provisions** of this Directive not all
 - **certain categories** of civil servants, [...],
 - **specific nature** of the **duties** that they are called on to perform or of their **employment conditions**
- ✓ Art. 9(2) on parallel employment: “[...] *on the basis of objective grounds, such as **health and safety**, the **protection of business confidentiality**, the **integrity of the public service** or the **avoidance of conflicts of interest***”
- ✓ **EU case law: exemptions; indirect discrimination must be**
- ✓ **appropriate to reach a legitimate objective and must not go beyond what is necessary to attain that objective.”**
- ✓ *limited to what is **strictly necessary** in order to safeguard the interests which those derogations enable to be protected (case on working time)*

Exclusions must also take account of

- EU charter of Fundamental Rights Articles 31 – health, safety, dignity- and 52 -limitations on the rights and freedoms must respect the essence of those rights
- European Pillar of Social Rights, Principles No5 – secure and adaptable employment, fair and equal treatment and No7 – protection in case of dismissals
- **EC expert Group report: these principles must be kept in mind when assessing any exceptions from the Directive**

Objective grounds - Recap

- *unequal treatment must be justified by*
 - the presence of *precise* and *specific* factors, characterising the employment condition to which it relates
 - in the *specific context* in which it occurs and
 - on the basis of *objective* and *transparent* criteria,
 - in order to ensure that unequal treatment responds to a *genuine need*
 - is *appropriate* to attain the objective pursued and
 - is *necessary* for that purpose
 - Is in line with fundamental workers' rights and EU caselaw

Transposition

- Make sure your government involves unions in the transposition (art 21.4)
- that it does not make use of exemptions
- if it does they must be as limited as possible based on clear, transparent objective grounds
- ETUC survey on state of play with transposition: Italian govt will not use exemptions, French unions concerned about the use of exemptions, no comments from others
- EC expert group report available in EN, useful arguments to prevent or at least limit scope of potential exemptions [here](#)