

Only written employment contracts inform workers about their rights and duties!



Written employment contracts in the European agriculture: practices and abuses

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Note: For the sake of easier legibility the gender distinction is omitted.

Written employment contracts in the EU: directives, facts and figures

The development of new, diverse forms of employment led to the passing on 14 October 1991 of Council Directive 91/533/EEC on the harmonization of European practices regarding the provision of written employment contracts.

This directive states that every employer in the European Union is required to inform employees in writing of the main terms of the contract or employment relationship. The employer shall be obliged to give the employee, not later than two months after the commencement of employment, a written document giving the necessary details. An exception is made to this regulation in the case of employment relationships with a total duration not exceeding one month, or with a working week not exceeding eight hours. This Directive shall not affect Member States' prerogative to permit the application of agreements which are more favourable to employees (cf. Directive in Annex 2).

25 years after the issue of this Directive, however, the reality in the Member States continues to be as diverse as before. The 5th European Working Conditions Survey, EWCS, carried out by Eurofound in 2010 reported that some 5%¹ of employees in the European Union have no written employment contract (cf. Eurofound 2012a:18). The reason for this might still be the widely diverging national laws and customs: when the need for a written employment contract exists, and within what time frame this written document is to be supplied, to some extent varies greatly from Member State to Member State. In some EU Member States, for example, such as Spain, a written employment contract continues to be generally not required. In Germany, Finland, France, Ireland, the Netherlands, Austria, Poland, Portugal, the United Kingdom and Cyprus, while a written employment contract may not be required, the *employment conditions* must nevertheless be available in writing. In Bulgaria, the Czech Republic, Denmark, Estonia, Italy, Lithuania, Latvia, Romania, Slovakia, Sweden and Greece, on the other hand, a written employment contract is always mandatory. The national legislations do, however, also vary in terms of the time frame within which the document (employment contract or employment conditions) is required to be supplied. In most of the countries listed above, the contract (or the employment conditions) must be set out before or immediately after the commencement of employment, and be available in writing, while other Member States allow a longer period. In Greece, Ireland and Great Britain, this period extends to two months after the commencement of employment, while in the Netherlands, Cyprus and Finland the period is one month (cf. Institute for the Study of Labour /IZA, 2011:39).

Despite the EU Directive and the national legislations, employment relationships which are not subject to any written contract continue in some cases to be very widespread in the individual Member States (for a precise list, see the table).

¹ Another report relying on the same survey even gives a figure of 8.8% (cf. Eurofound, 2012b:22).

The situation in European agriculture: one agricultural worker in four has no written employment contract

The EWCS results from 2005 show that the rate of people having no written employment contract in the agricultural sector is worse than any other in Europe, standing at a shocking 24% (Eurofound, 2009). An evaluation of the data in the European Social Survey (2004-9) by the Institute for the Study of Labour (IZA, 2011:38) has also shown that Spain, Portugal and Italy show a particularly high correlation between the 'agricultural sector' and 'lack of written employment contracts' factors; in other words, that sector is especially seriously affected by this practice (ibid., 2011:38). In Greece and Romania, too, oral employment contracts are very widespread (26% and 33.7%), with Eurofound reporting in 2010 that it is once again the agricultural sector that is particularly affected.

Migratory agricultural workers and seasonal workers, of whom EFFAT estimates there are some four million (cf. EFFAT, 2014:2014) are particularly endangered by the sometimes slack practices in some EU Member States with regard to the delay in issuing written employment contracts. Because, by definition, seasonal workers often work for only a very short period of a few months, weeks or even days, the two-month deadline given by the European Directive to the employers fails to offer these workers sufficient protection against exploitation. Ultimately it is only if a person has his rights and duties set out before him in black and white that he will be able to protest about them! The fact that in addition the national laws differ widely with regard to the conditions governing the need for a written employment contract (in some countries, a written employment contract is required only for unlimited employment relationships, while in others, it is required only for limited-term appointments. For an exact list, see table, page 6), creates further uncertainty.

Unfortunately, no reliable figures are available on this point, but EFFAT's member organisations estimate that seasonal workers are indeed the most seriously affected by the practice of oral contracts. In Germany, for example, it is suspected that while some 90% of agricultural workers in full-time employment have a written contract, only about 20-23% of the seasonal workforce get such a document. Furthermore, these documents often fail to meet the legal requirements, they are incomplete in some way, etc. and in addition, some 15% of the seasonal contracts are drawn up only in German. According to the German trade union in agreement with the Ministry of Labour, this means that only about 5-8% of seasonal workers have a document in their own language.

This also poses a problem. Only a few EU Member States, such as France, have issued explicit rules to ensure that workers are entitled to an employment contract in their own language. So the result is that even if some of the cross-border agricultural workers do have a formal written contract, they nevertheless often do not know what they have signed up to. This creates uncertainty and opens the doors for exploitation.

Our demand: a written employment contract for every agricultural worker in his own language from day one of his employment relationship!

This is the only way to ensure that agricultural workers in the EU know their rights and duties and can also make a complaint in the event of an abuse. Only if there is a guarantee that the employment contract exists before the commencement of the employment or no later than the commencement of the employment can protection also be extended to those very groups of workers who enable agricultural production to be flexible and dynamic.

A document on the 'shadow economy' by the European Commission has also recommended, in the framework of the Europe 2020 Strategy, that the exemptions for the need for written employment contracts be restricted to the minimum in order to be able to work more effectively to counter the shadow economy (cf. European Commission, n.d.).

Some countries have already reacted to the realities of short-term and seasonal employment in the agricultural sector, and developed effective instruments to protect workers and at the same time alleviate the bureaucratic burden on employers. For example, in France, a special employment contract for seasonal workers has been devised, the so-called TESA (Titre Emploi Simplifié Agricole). This amalgamates 11 forms (e.g. the employment contract and the worker's registration with the authorities). It is valid for employment relationships not exceeding three months in duration and must be submitted to the 'Mutualité Sociale Agricole' no later than the last working day before the commencement of the employment. The contract should be in French, although the worker is also entitled to request that it be translated into his own language. This is a good example of how even agricultural workers employed on short-term contracts can be effectively protected without representing a huge additional cost burden on the employer.

It would be desirable for a similar development to be fostered at European level, in order to be able to ensure that every agricultural worker is effectively protected and informed as from the first day of his employment.

Overview table: Employment contracts in the EU, legal guidelines, figures and trends

Country	Legal regulations concerning written employment contracts	Deadline for drafting the document	Employees without employment contract 2005 ²	Employees without employment contract 2006 / 2007 ³	Trend
BE	Compulsory for fixed-term/ "atypical" ⁴ employment	In advance or directly after the start of work	2,50%	2,10%	Decrease
BG	Always required	In advance or directly after the start of work	6,20%	11,30%	Increase
DK	Always required	In advance or directly after the start of work	10,30%	9,10%	Decrease
DE	Contract not required, but written employment conditions	In advance or directly after the start of work	3,70%	1,80%	Decrease
EE	Always required ⁵	In advance or directly after the start of work	5,10%	4,20%	Decrease
FI	Contract not required, but written employment conditions	No later than 1 month prior to the start of work	2,20%	0,70%	Decrease
FR	Compulsory for fixed-term/ "atypical" employment	In advance or directly after the start of work	3,90%	4,5%	Increase
GR	Always required	No later than 2 months prior to the start of work	26%	--	--
IE	Contract not required, but written employment conditions	No later than 2 months prior to the start of work	27,70%	33,80%	Increase
IT	Always required	In advance or directly after the start of work	6,10%	4,80%	Decrease
LV	Always required	In advance or directly after the start of work	5,40%	7,20%	Increase
LT	Always required	In advance or directly after the start of work	5,30%	3,0% (in 2009)	Decrease
LU	Always required	In advance or directly after the start of work	--	--	--

² Based on the „European Working Conditions Survey“ 2005, IZA, 2011.

³ Based on the „European Social Survey“, IZA, 2011.

⁴ For example: training, fixed-term and seasonal employment, part-time, etc.

⁵ Except for employment not exceeding a duration of 2 weeks

NL	Contract not required, but written employment conditions	No later than 1 month prior to the start of work	2,10%	5,00%	Increase
AT	Compulsory for fixed-term/ "atypical" employment	In advance or directly after the start of work	8,60%	10,30%	Increase
PL	Compulsory for fixed-term/ "atypical" employment, otherwise only written working conditions	In advance or directly after the start of work	5,80%	--	--
PT	Compulsory for fixed-term/ "atypical" employment ⁶	In advance or directly after the start of work	7%	10,60%	Increase
RO	Always required	In advance or directly after the start of work	6,80%	6,1% (in 2008)	Decrease
SW	Always required	In advance or directly after the start of work	0,20%	0,70%	Increase
SK	Always required	In advance or directly after the start of work	1,30%	2,90%	Increase
SL	Always required	In advance or directly after the start of work	9,40%	4,50%	Decrease
SP	Compulsory for fixed-term/ "atypical" employment or when requested by one of the both parties	None	8,20%	6,80%	Decrease
CZ	Always required	In advance or directly after the start of work	0,80%	--	--
HU	Compulsory only for open-ended employment relationship	In advance or directly after the start of work	4,40%	2,60%	Decrease
UK	Contract not required, but written employment conditions	No later than 2 months prior to the start of work	14,10%	12,40%	Decrease
CY	Compulsory for fixed-term/ "atypical" employment	No later than 1 month prior to the start of work	41,50%	56,80%	Increase

⁶ Open-ended contracts and contracts for an employment duration no longer than one week can be concluded orally

Annex 1

Draft specimen contract for employees in agriculture, forestry and horticulture

Employment contract between

Mr / Ms / Company (hereinafter referred to as the employer)

Name, address, telephone

and

Mr / Ms name, address, telephone (where available) (hereinafter referred to as the employee)

1. The present employment contract is to begin on and end on (where the contract is to be limited in time).
2. The work is to be performed at the following address:

(if the work location changes, please record this here).....
3. The employee is to be employed as (description of the work).
4. The work includes the following main tasks: (a short characterisation or description of the work).
5. The employee is to receive annual leave of working days (in the case of limited-term employment contracts: number of days' leave earned during the duration). The leave is to be granted under the following terms:
6. The notice period is: working days (end of the month, end of the quarter ... please describe here).
7. The gross basic starting wage shall be euro per hour / per month (in the case of a piece rate, please describe). The wage is to be paid out at the end of the day / the end of the week / the end of the month (please specify). The wage is to be transferred to the following bank account held by the employee: (give bank details).
8. The normal working day shall begin on work days at and end at The working day shall begin and end at the work location given above (please enter any changes here). The working day shall be interrupted by the following break times:

- a. Breakfast: from to.....
- b. Lunch: from to
- c. Other break: from to

9. The regular working week shall consist of hours.

Extra hours are to be paid at: (please fill in).

10. Travel time (from home to work location and back) is to form part of the working time / is not to form part of the working time (delete as applicable).
11. The remuneration and any supplements and other payments shall be governed by the following collective agreement (please indicate here).

Annex 2

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

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 Commission⁷,

Having regard to the opinion of the European Parliament⁸,

Having regard to the opinion of the Economic and Social Committee⁹,

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 possible infringements of their rights and to create greater transparency on the labour market;

Whereas the relevant legislation of the Member States differs considerably on such fundamental points as the requirement to inform employees in writing of the main terms of the contract or employment relationship;

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

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 point 9 of the Community Charter of Fundamental Social Rights for Workers, adopted at the Strasbourg European Council on 9 December 1989 by the Heads of State and Government of 11 Member States, states:

“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.”

⁷ OJ Nr C 24 of 31 January 1991, p. 3

⁸ OJ Nr C 240 of 16 September 1991, p. 21

⁹ OJ Nr C 159 of 17 June 1991, p. 32

Whereas it is necessary to establish at Community level the general requirement that every employee must be provided with a document containing information on the essential elements of his contract or employment relationship;

Whereas, in view of the need to maintain a certain degree of flexibility in employment relationships, Member States should be able to exclude certain limited cases of employment relationship from this Directive's scope of application;

Whereas the obligation to provide information may be met by means of a written contract, a letter of appointment or one or more other documents or, if they are lacking, a written statement signed by the employer;

Whereas, in the case of expatriation of the employee, the latter must, in addition to the main terms of his contract or employment relationship, be supplied with relevant information connected with his secondment;

Whereas, in order to protect the interests of employees with regard to obtaining a document, any change in the main terms of the contract or employment relationship must be communicated to them in writing;

Whereas it is necessary for Member States to guarantee that employees can claim the rights conferred on them by this Directive;

Whereas Member States are to adopt the laws, regulations and legislative provisions necessary to comply with this Directive or are to ensure that both sides of industry set up the necessary provisions by agreement, with Member States being obliged to take the necessary steps enabling them at all times to guarantee the results imposed by this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Scope

- (1) This Directive shall apply to every paid employee having a contract or employment relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State.
- (2) Member States may provide that this Directive shall not apply to employees having a contract or employment relationship:
 - a) - with a total duration not exceeding one month, and/or
- with a working week not exceeding eight hours; or
 - b) of a casual and/or specific nature provided, in these cases, that its non-application is justified by objective considerations.

Article 2

Obligation to provide information

(1) An employer shall be obliged to notify an employee to whom this Directive applies, hereinafter referred to as 'the employee', of the essential aspects of the contract or employment relationship.

(2) The information referred to in paragraph 1 shall cover at least the following:

- a) the identities of the parties;
- b) the place of work; where there is no fixed or main place of work, the principle that the employee is employed at various places and the registered place of business or, where appropriate, the domicile of the employer;
- c) i) the title, grade, nature or category of the work for which the employee is employed; or
ii) a brief specification or description of the work;
- d) the date of commencement of the contract or employment relationship;
- e) in the case of a temporary contract or employment relationship, the expected duration thereof;
- f) the amount of paid leave to which the employee is entitled or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;
- g) the length of the periods of notice to be observed by the employer and the employee should their contract or employment relationship be terminated or, where this cannot be indicated when the information is given, the method for determining such periods of notice;
- h) the initial basic amount, the other component elements and the frequency of payment of the remuneration to which the employee is entitled;
- i) the length of the employee's normal working day or week;
- j) where appropriate;
 - i) the collective agreements governing the employee's conditions of work;or
 - ii) 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.

(3) The information referred to in paragraph 2 f), g), h) and i) may, where appropriate, be given in the form of a reference to the laws, regulations and administrative or statutory provisions or collective agreements governing those particular points.

Article 3
Means of information

(1) The information referred to in Article 2 (2) may be given to the employee, not later than two months after the commencement of employment, in the form of:

- a) a written contract of employment; and/or
- b) a letter of engagement; and/or
- c) 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).

(2) Where none of the documents referred to in paragraph 1 is handed over to the employee within the prescribed period, the employer shall be obliged to give the employee, not later than two months after the commencement of employment, a written declaration signed by the employer and containing at least the information referred to in Article 2 (2).

Where the document(s) referred to in paragraph 1 contain only part of the information required, the written declaration provided for in the first subparagraph of this paragraph shall cover the remaining information.

(3) Where the contract or employment relationship comes to an end before expiry of a period of two months as from the date of the start of work, the information provided for in Article 2 and in this Article must be made available to the employee by the end of this period at the latest.

Article 4
Expatriate employees

(1) Where an employee is required to work in a country or countries other than the Member State whose law and/or practice governs the contract or employment relationship, the document(s) referred to in Article 3 must be in his/her possession before his/her departure and must include at least the following additional information:

- a) the duration of the employment abroad;
- b) the currency to be used for the payment of remuneration;
- c) where appropriate, the benefits in cash or kind attendant on the employment abroad;
- d) where appropriate, the conditions governing the employee's repatriation.

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

(3) Paragraphs 1 and 2 shall not apply if the duration of the employment outside the country whose law and/or practice governs the contract or employment relationship is one month or less.

Article 5

Modification of aspects of the contract or employment relationship

(1) Any change in the details referred to in Articles 2 (2) and 4 (1) must be the subject of a written document to be given by the employer to the employee at the earliest opportunity and not later than one month after the date of entry into effect of the change in question.

(2) The written document referred to in paragraph 1 shall not be compulsory in the event of a change in the laws, regulations and administrative or statutory provisions or collective agreements cited in the documents referred to in Article 3, supplemented, where appropriate, pursuant to Article 4 (1).

Article 6

Form and proof of the existence of a contract or employment relationship and procedural rules

This 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,
- the relevant procedural rules.

Article 7

More favourable provisions

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

Article 8

Defence of rights

(1) Member States shall 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 this Directive to pursue their claims by judicial process after possible recourse to other competent authorities.

(2) Member States may provide that access to the means of redress referred to in paragraph 1 are subject to the notification of the employer by the employee and the failure by the employer to reply within 15 days of notification.

However, the formality of prior notification may in no case be required in the cases referred to in Article 4, neither for workers with a temporary contract or employment relationship, nor for employees not covered by a collective agreement or by collective agreements relating to the employment relationship.

Article 9

Final provisions

(1) Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than 30 June 1993 or shall 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 this Directive.

They shall forthwith inform the Commission thereof.

(2) Member States shall 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, on request, within two months of receiving that request; any of the documents referred to in Article 3, supplemented, where appropriate, pursuant to Article 4 (1).

(3) When Member States adopt the measures referred to in paragraph 1, such measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

(4) Member States shall forthwith inform the Commission of the measures they take to implement this Directive.

Article 10

This Directive is addressed to the Member States.

Done at Luxembourg, 14 October 1991.

For the Council

The President

B. de VRIES

Sources

IZA, (2011). *Informal Workers Across Europe: Evidence from 30 Countries*. [online] Bonn. Available at: <http://ftp.iza.org/dp5871.pdf> [Accessed 22 Feb. 2016].

EFFAT, 2014. Die Situation der Saisonarbeiter in der Europäischen Landwirtschaft verbessern. Available from: <http://www.effat.org/sites/default/files/news/14233/de-2014-1- project information.pdf>

Eurofound, 2010: Flexible forms of work: 'very atypical' contractual arrangements. [online] Available from: <file:///C:/Documents%20and%20Settings/effat3.INTRA/Desktop/Seasonal%20workers%20-%20written%20employment%20contracts/Flexible%20forms%20of%20work%20%20%E2%80%98very%20atypical%E2%80%99%20contractual%20arrangements.htm>.

Eurofound (2009). *Agriculture and Fishing*. Fact Sheet. [online] Dublin. Available at: <https://www.eurofound.europa.eu/de/publications/information-sheet/2008/other/agriculture-and-fishing-fact-sheet> [Accessed 10 Mar. 2016].

Eurofound (2012a), *Fifth European Working Conditions Survey*, Publications Office of the European Union, Luxembourg.

Eurofound (2012b), *Trends in job quality in Europe*, Publications Office of the European Union, Luxembourg.

Eur-lex.europa.eu. (2016). *EUR-Lex - c10811 - EN - EUR-Lex*. [online] Available at: <http://eur-lex.europa.eu/legal-content/DE/TXT/?uri=URISERV%3Ac10811> [Accessed 10 Mar. 2016].

European Commission, (n.d.). *SHADOW ECONOMY AND UNDECLARED WORK*. [online] Available at: http://ec.europa.eu/europe2020/pdf/themes/07_shadow_economy.pdf [Accessed 24 Mar. 2016].