



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 4 June 2008

10357/08

**Interinstitutional File:
2002/0072 (COD)**

**SOC 346
CODEC 727**

COVER NOTE

from : Presidency

to : Council (EPSCO)

No. prev. doc. : 9687/08 SOC 300 CODEC 625

No. Cion prop. : 15098/02 SOC 576 CODEC 1588 – COM(2002) 701 final

Subject : **Amended proposal for a Directive of the European Parliament and the Council on working conditions for temporary workers**
- Political agreement
= Slovene Presidency compromise text

Delegations will find attached, with a view to the meeting of the Council (EPSCO) on 9/10 June 2008, a compromise text on the above-mentioned amended proposal for a Directive, presented by the Presidency.

The outcome of the Permanent Representatives Committee's preliminary exchange of views on this compromise text is reported in doc. 10064/08.

Amended proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

on temporary agency work¹

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and, in particular, Article 137(2) thereof,

Having regard to the proposal from the Commission²,

Having regard to the opinion of the Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁵,

Whereas:

¹ Scrutiny reservations by BE, FR, LU and PT which preferred to retain the reference to "*working conditions*" as in the original Commission proposal. Positions are linked to the outcome on Articles 2 & 4.

² OJ C of , p. .

³ OJ C of , p. .

⁴ OJ C of , p. .

⁵ OJ C of , p. .

- (1) This Directive respects the fundamental rights and complies with the principles recognised by the Charter of Fundamental Rights of the European Union; in particular, it is designed to ensure full compliance with Article 31 of that Charter, which provides that every worker has the right to working conditions which respect his or her health, safety and dignity and to restriction of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.
- (2) Moreover, point 7 of the Community Charter of the Fundamental Social Rights of Workers provides, *inter alia*, that the completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community; this process will be achieved by harmonising progress on these conditions, mainly in respect of forms of work such as fixed-term contract work, part-time work, temporary agency work and seasonal work.
- (3) [c.f. Recital (9a)]
- (4) [c.f. Recital (9b)]
- (5) The Commission consulted the social partners on the course of action that could be adopted at Community level with regard to flexibility of working hours and job security of workers on 27 September 1995.
- (6) After that consultation, the Commission considered that Community action was desirable and consulted the social partners once again with regard to the content of the planned proposal on 9 April 1996.
- (7) In the introduction to the framework agreement on fixed-term work concluded on 18 March 1999, the signatories had indicated their intention to consider the need for a similar agreement on temporary agency work and not to include temporary agency workers in the Directive on fixed-term work.

- (8) The general cross-sector organisations, i.e. the Union of Industrial and Employers' Confederations of Europe (UNICE)⁶, European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) and European Trade Union Confederation (ETUC), informed the Commission in their joint letter of their desire to implement the procedure provided for by Article 138(4) of the EC Treaty; in a joint letter they asked the Commission for an extension of the deadline by three months; the Commission granted this request by extending the negotiation deadline until 15 March 2001.
- (9) On 21 May 2001, the social partners acknowledged that their negotiations on temporary agency work had not produced any agreement.
- (9a) In March 2005, the European Council considered it vital to relaunch the Lisbon Strategy and to refocus its priorities on growth and employment. The Council approved the Integrated Guidelines for Growth and Jobs 2005-2008, which seek, inter alia, to promote flexibility combined with employment security and reduce labour market segmentation, having due regard to the role of social partners.
- (9b) In accordance with the Social Agenda (2005-2010), which, on the basis of the Communication from the Commission⁷, was welcomed by the March 2005 European Council as a contribution towards achieving the Lisbon Strategy objectives by reinforcing the European social model, the European Council considered that new forms of work organisation and a greater diversity of contractual arrangements for workers and businesses, better combining flexibility with security, would contribute to adaptability. Furthermore, the December 2007 European Council endorsed the agreed common principles of flexicurity which strike a balance between flexibility and security in the labour market and help both workers and employers to seize the opportunities globalisation offers.

⁶ UNICE changed its name to BUSINESSEUROPE in January 2007.

⁷ 2005 (COM) 33 final

- (10) There are considerable differences in the use of temporary agency work and in the legal situation, status and working conditions of temporary agency workers within the Union.
- (11) Temporary agency work meets not only undertakings' needs for flexibility but also the need of employees to reconcile their working and private lives. It thus contributes to job creation and to participation and integration in the labour market.
- (12) This Directive establishes a protective framework for temporary agency workers which is non-discriminatory, transparent and proportionate, while respecting the diversity of labour markets and industrial relations.
- (13) [c.f. Recital (21b)]
- (14) Directive 91/383/EEC of 25 June 1991⁸ supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship establishes the safety and health provisions applicable to temporary agency workers.
- (15) The basic working and employment conditions applicable to temporary agency workers should be at least those which would apply to such workers if they were recruited by the user undertaking to occupy the same job.
- (16) Employment contracts of an indefinite duration are the general form of employment relationship. In the case of workers who have a permanent contract with their temporary agency, and in view of the special protection such a contract offers, provision should thus be made to permit exemptions from the rules applicable in the user undertaking.

⁸ OJ L 206 of 29.7.1991, p. 19.

- (17) In order to cope in a flexible way with the diversity of labour markets and industrial relations, Member States may allow the social partners to define working and employment conditions, provided that the overall level of protection for temporary agency workers is respected.
- (18) Furthermore, in certain limited circumstances, Member States should, on the basis of an agreement concluded by the social partners at national level, be able to derogate within limits from the principle of equal treatment, as long as an adequate level of protection is provided.
- (19) The improvement in the minimum protection for temporary agency workers should be accompanied by a review of any restrictions or prohibitions which may have been imposed on temporary agency work. They may be justified only on grounds of the general interest regarding, in particular the protection of workers, the requirements of safety and health at work and the need to ensure that the labour market functions properly and abuses are prevented.
- (19a) This Directive also does not affect the autonomy of the social partners nor does it affect relations between the social partners, including the right to negotiate and conclude collective agreements in accordance with national law and practices while respecting prevailing Community law.
- (20) The provisions of this Directive on restrictions or prohibitions on temporary agency work are without prejudice to national legislation or practices prohibiting workers on strike being replaced by temporary agency workers.
- (21) [deleted]

- (21a) Member States should provide for administrative or⁹ judicial procedures to safeguard temporary agency workers' rights, as well as for sanctions that are effective, dissuasive and proportionate for breaches of the obligations resulting from this Directive.
- (21b) This Directive should be implemented in compliance with the Treaty, specifically with regard to the freedom to provide services and the freedom of establishment and without prejudice to Directive 96/71/EC of the European Parliament and the Council of 16 December 1996¹⁰ concerning the posting of workers in the framework of the provision of services.¹¹
- (22) In compliance with the principle of subsidiarity and the principle of proportionality under Article 5 of the Treaty, the aims of the action envisaged above cannot be achieved satisfactorily by the Member States, since the goal is to establish a harmonised Community-level framework of protection for temporary agency workers; owing to the scale and the impact of the action planned, these objectives can best be met at Community level by introducing minimum requirements applicable throughout the European Community; this Directive confines itself to what is required for achieving these objectives,

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Directive applies to workers with a contract of employment or employment relationship with a temporary agency, who are assigned to user undertakings to work temporarily under their supervision and direction.

⁹ The word "*and*" has been changed into "*or*" in order to align this recital with Article 10(1).

¹⁰ OJ L 18 of 21.1.1997, p. 1.

¹¹ Former Recital 13

2. This Directive applies to public and private undertakings which are temporary agencies or user undertakings engaged in economic activities whether or not they are operating for gain.
3. Member States may, after consulting the social partners, provide that this Directive does not apply to employment contracts or relationships concluded under a specific public or publicly supported vocational training, integration or retraining programme.

Article 2

Aim

The purpose of this Directive is to ensure the protection of temporary agency workers and to improve the quality of temporary agency work by ensuring that the principle of equal treatment, as set out in Article 5, is applied to temporary agency workers and recognising temporary agencies as employers, while taking into account the need for establishing a suitable framework for the use of temporary agency work with a view to contributing effectively to the creation of jobs and to the development of flexible forms of working.¹²

Article 3

Definition

1. For the purposes of this Directive:
 - a) “worker” means any person who, in the Member State concerned, is protected as a worker under national employment law;

¹² BE, FR and LU: scrutiny reservations pending the final outcome on the Directive.
FR considered the protection of workers to be the Directive's main aim, particularly in view of its legal basis.
DE preferred to retain a reference to the "*smooth functioning of the labour market*".
UK: would have preferred a stronger emphasis on liberalisation; however, it was able to accept the article in its current, balanced formulation.

- b) temporary agency worker: a worker with a contract of employment or an employment relationship with a temporary agency with a view to being assigned to a user undertaking to work temporarily under its supervision and direction;
- c) “assignment” means the period during which the temporary agency worker is placed at the user undertaking to work temporarily under its supervision and direction;
- d) “temporary agency” means any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction;
- e) “user undertaking” means any natural or legal person for whom and under the supervision and direction of whom a temporary agency worker works temporarily;
- f) “basic working and employment conditions”: working and employment conditions laid down by legislation, regulations, administrative provisions, collective agreements and/or other binding general provisions in force in the user undertaking relating to:
 - i) the duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays;
 - ii) pay.

2. This Directive shall be without prejudice to national law as regards the definition of pay, contract of employment or employment relationship or worker.

Member States shall not exclude from the scope of this Directive workers, contracts of employment or employment relationships solely because they relate to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency.

Article 4¹³

Review of restrictions or prohibitions

1. Prohibitions or restrictions on the use of temporary agency work are justified only on grounds of general interest relating in particular to the protection of temporary agency workers, the requirements of health and safety at work or the need to ensure that the labour market functions properly and abuses are prevented.
2. At the time indicated in Article 11, paragraph 1, Member States, after consulting the social partners in accordance with national legislation, collective agreements and practices, shall review any restrictions or prohibitions on the use of temporary agency work in order to verify whether they are justified on the grounds mentioned in paragraph 1.
 - 2a. If such restrictions or prohibitions are laid down by collective agreements, the review mentioned in paragraph 2 can be carried out by the social partners which have negotiated the relevant agreement.
3. Paragraphs 1, 2 and 2a are without prejudice to national requirements with regard to registration, licensing, certification, financial guarantees or monitoring of temporary agencies.

¹³ See delegations' comments in the Report, Point IV (a).

EMPLOYMENT AND WORKING CONDITIONS

Article 5¹⁴

The principle of equal treatment

1. The basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job.

When applying the above paragraph, the rules in force in the user undertaking on:

i) protection of pregnant women and nursing mothers and protection of children and young people; and

ii) equal treatment for men and women and any action to combat any discrimination based on sex, race or ethnic origin, religion, beliefs, disabilities, age or sexual orientation;

must be complied with as established by legislation, regulations, administrative provisions, collective agreements and/or any other general provisions¹⁵.

¹⁴ For the substantive discussion of this Article, see doc. 10064/08.

¹⁵ UK: positive scrutiny reservation in relation to subparagraphs (i) and (ii). Cion undertook to explain more in detail what e.g. the protection of pregnant women would mean in the context of temporary work.

2. As regards pay, Member States may, after consulting the social partners, provide that an exemption be made to the principle established in paragraph 1 when temporary agency workers who have a permanent contract of employment with a temporary agency continue to be paid in the time between assignments¹⁶.
3. Member States may, after consulting the social partners, give them, at the appropriate level and subject to the conditions laid down by the Member States, the option of upholding or concluding collective agreements which, while respecting the overall protection of temporary agency workers, may establish arrangements concerning the working and employment conditions of temporary agency workers which may differ from those referred to in paragraph 1.
4. Member States, in which there is either no system in law for declaring collective agreements universally applicable or no such system in law or practice for extending their provisions to all similar undertakings in a certain sector or geographical area, may, after consulting the social partners at national level and on the basis of an agreement concluded by them, derogate from the principle established in paragraph 1 with regard to the basic working and employment conditions of temporary agency workers which may include a qualifying period for equal treatment, as long as an adequate level of protection is provided for such workers.

Such agreements shall be sufficiently precise and accessible to allow the sectors and firms concerned to identify and comply with their obligations, and shall be without prejudice to agreements at national, regional or sectoral level that are more favourable to workers, and to the prevailing Community law.

¹⁶ DE and UK: scrutiny reservations as they did not wish to limit this paragraph to pay and called for the deletion of the word “*permanent*”.

5. Member States shall take appropriate measures, in accordance with national law and/or practice, with a view to preventing misuse in the application of this Article and, in particular, to preventing successive assignments designed to circumvent the provisions of this Directive. They shall inform the Commission about such measures.

17

Article 6

Access to employment, collective facilities and vocational training

1. Temporary agency workers shall be informed of any vacant posts in the user undertaking to give them the same opportunity as other workers in that undertaking to find permanent employment. Such information may be provided by a general announcement in a suitable place in the undertaking for which and under whose supervision temporary agency workers are engaged.
2. Member States shall take any action required to ensure that any clauses prohibiting or having the effect of preventing the conclusion of a contract of employment or an employment relationship between the user undertaking and the temporary agency worker after his assignment are null and void or may be declared null and void.

This paragraph is without prejudice to provisions under which temporary agencies receive a reasonable level of recompense for services rendered to user undertakings for assignment, recruitment and training of temporary agency workers.

¹⁷ UK asked for the reinsertion of Article 5(6) as it appeared in document 9739/03 ADD 1: "*The provisions of this article shall not apply to occupational social security schemes, including occupational pension schemes and occupational sick pay schemes, or financial participation schemes.*"

3. Temporary agencies shall not charge workers any fees, in exchange for arranging for them to be recruited by a user undertaking, or for concluding a contract of employment or an employment relationship with a user undertaking after carrying out an assignment in that undertaking.
4. Without prejudice to Article 5(1), temporary agency workers shall be given access to the amenities or collective facilities in the user undertaking especially canteen, child-care facilities and transport services under the same conditions as workers employed directly by the undertaking, unless the difference in treatment is justified by objective reasons.
5. Member States shall take suitable measures or shall promote dialogue between the social partners, in accordance with their national traditions and practices in order to:
 - improve temporary agency workers' access to training and to child-care facilities in the temporary agencies, even in the periods between their assignments, in order to enhance their career development and employability;
 - improve temporary agency workers' access to training for user undertakings' workers.

Article 7

Representation of temporary agency workers

1. Temporary agency workers shall count, under conditions established by the Member States, for the purposes of calculating the threshold above which bodies representing workers provided for under Community and national law and collective agreements are to be formed at the temporary agency.

2. Member States may provide that, under conditions that they define, these workers count for the purposes of calculating the threshold above which bodies representing workers provided for by Community and national law and collective agreements are to be formed in the user undertaking, in the same way as if they were workers employed directly for the same period of time by the user undertaking.
3. Those Member States which avail themselves of the option provided for in paragraph 2 shall not be obliged to implement the provisions of paragraph 1 of this article.

Article 8

Information of workers' representatives

Without prejudice to national and Community provisions on information and consultation which are more stringent and/or more specific and in particular Directive 2002/14/EC, the user undertaking must provide suitable information on the use of temporary agency workers when providing information on the employment situation in that undertaking to bodies representing the workers set up in accordance with national and Community legislation.

CHAPTER III
FINAL PROVISIONS

Article 9

Minimum requirements

1. This Directive does not prejudice the Member States' right to apply or introduce legislative, regulatory or administrative provisions which are more favourable to workers or to promote or permit collective agreements concluded between the social partners which are more favourable to workers.

2. The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive. This shall be without prejudice to the rights of Member States and/or management and labour to lay down, in the light of changing circumstances, different legislative, regulatory or contractual arrangements to those prevailing at the time of the adoption of this Directive, provided always that the minimum requirements laid down in this Directive are adhered to.

Article 10

Penalties

1. Member States shall provide for appropriate measures in the event of non-compliance with this Directive by the temporary work agency or the user undertaking. In particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.

2. Member States shall lay down rules on penalties applicable in the event of infringements of national provisions enacted under this Directive and shall take all necessary measures to ensure that they are applied. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify these provisions to the Commission by the date given in Article 11 at the latest and any subsequent amendment within good time. They shall, in particular, ensure that workers and/or their representatives have adequate means of enforcing the obligations under this Directive.

Article 11

Implementation

1. The Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by [two years after adoption]¹⁸ at the latest, or shall ensure that the social partners introduce the necessary provisions by way of an agreement, whereby the Member States must make all the necessary arrangements to enable them to guarantee at any time that the objectives of this Directive are being attained. They shall forthwith inform the Commission thereof.
- 1a. The Member States shall inform the Commission of the results of the review as mentioned in Article 4, paragraph 2 and 2a respectively by [two years after adoption] at the latest.

¹⁸ BE, BG, DK, DE, EL, ES, IE, LU, HU, MT, NL, PT, SI, SE, and UK expressed a preference for a three-year period. AT: scrutiny reservation on the issue. Cion upheld its proposal for two years.

2. When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 12

Review by the Commission

(Five years after adoption of this Directive) at the latest, the Commission shall, in consultation with the Member States and social partners at Community level, review application thereof with a view to proposing, where appropriate, the necessary amendments to the Parliament and the Council.

Article 13

Entry into force

This Directive shall enter into force on the twentieth day after its publication in the *Official Journal of the European Union*.

Article 14

This Directive is addressed to the Member States.

Done at

For the European Parliament
The President

For the Council
The President