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No. prev. doc. :	10263/08 SOC 334 SAN 116 TRANS 189 MAR 78 CODEC 712
No. Cion prop. :	9554/05 SOC 244 SAN 94 TRANS 108 MAR 84 CODEC 441 – COM(2005) 246 final
Subject :	**Amended proposal for a Directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time** **- Political agreement on a common position**

Delegations will find attached the text on which the Council (EPSCO) reached a political agreement by a qualified majority at its session on 9/10 June 2008.

The statements to be entered in the Council Minutes are to be found in ADD 1 to this document.

ANNEX

Amended proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2003/88/EC concerning certain aspects
of the organisation of working time

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 Commission,

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

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

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

Whereas:

(1) Article 137 of the Treaty provides that the Community should support and supplement the activities of the Member States with a view to improving the working environment to protect workers' health and safety. Directives adopted on the basis of the aforementioned Article must avoid imposing any administrative, financial or legal constraints in such a way as to hold back the creation and development of small and medium-sized undertakings.

(2) Directive 2003/88/CE of the European Parliament and of the Council of 4 November 2003, concerning certain aspects of the organisation of working time, establishes minimum requirements concerning the organisation of working time, inter alia in respect of daily and weekly rest periods, breaks, maximum weekly working time, annual leave and certain aspects of night work, shift work and patterns of work.

(3) Two provisions of Directive 2003/88/EC have a clause providing for a review before 23 November 2003. They are Article 19 and Article 22(1).

(4) More than ten years after the adoption of Council Directive 93/104/EC, the initial Directive concerning the organisation of working time, it has become necessary to take into consideration new realities and demands from both employers and workers and provide the resources to meet the growth and employment objectives laid down by the European Council on 22 and 23 March 2005 in the context of the Lisbon strategy.

(5) Reconciliation of work and family life is also an essential element for achieving the objectives set by the Union in the Lisbon strategy, particularly for increasing the rate of employment amongst women. The aim is not only to create a more satisfactory working environment, but also to respond better to workers' demands, in particular those with family responsibilities. A number of amendments introduced in Directive 2003/88/EC are intended to permit greater compatibility between work and family life.

(6) In this context, the Member States should encourage the social partners to conclude agreements at the appropriate level for improving reconciliation of work and family life.

(7) There is a need to strengthen the protection of workers' health and safety and for greater flexibility in organising working time, particularly with regard to on-call time and, more specifically, inactive periods during on-call time, and also to strike a new balance between reconciling work and family life on the one hand and a more flexible organisation of working time on the other.

(7a) Workers should be afforded periods of compensatory rest in circumstances where rest periods are not granted. The determination of the length of the reasonable period within which equivalent compensatory rest is granted to workers should be left to the Member States, taking into account the need to ensure the safety and health of the workers concerned and the principle of proportionality.

(8) The provisions on the reference period must also be re-examined, with the objective of adapting them to the needs of employers and employees subject to safeguards for the protection of workers' health and safety.

(8a) Whenever the duration of the employment contract is less than one year, the reference period should not be longer than the duration of the employment contract.

(9) The experience gained in the application of Article 22(1) shows that the purely individual decision not to be bound by Article 6 of the Directive can be problematic with regard to the protection of workers' health and safety and the freedom of choice of the worker.

(9a) The option provided for in Article 22(1) is a derogation from the principle of a 48-hour maximum working week, calculated as an average over a reference period. It is subject to the effective protection of workers' health and safety, and to the express, free and informed consent of the worker concerned. Its use must be subject to appropriate safeguards to protect these conditions, and to close monitoring.

(9ab) Before implementing the option provided in Article 22(1), consideration should be given to whether the longest reference period or other flexibility provisions provided by the Directive do not guarantee the flexibility needed.

(9b) In order to avoid risks to the health and safety of workers, the cumulative use in a Member State of both the flexible reference period provided by Article 19(b), and the option under Article 22(1) of this Directive is not possible.

(9c) Deleted.

(10) In accordance with Article 138(2) of the Treaty, the Commission consulted the social partners at Community level on the possible direction for Community action in this field.

(11) Following this consultation, the Commission considered that Community action was desirable and consulted the social partners again on the content of the envisaged proposal, in accordance with Article 138(3) of the Treaty.

(12) Following this second phase of consultation, the social partners at Community level did not inform the Commission of their wish to initiate the process which could lead to the conclusion of an agreement, as set out in Article 138(4) of the Treaty.

(13) Given that the objective of the planned action, which consists of modernising Community legislation concerning the organisation of working time, cannot be achieved sufficiently by the Member States and may therefore be better realised at Community level, the Community may take measures in accordance with the principle of subsidiarity enshrined in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary for the attainment of those objectives.

(14) This Directive respects fundamental rights and observes the principles specifically recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full respect for the right to fair and equitable working conditions referred to in Article 31 of the Charter of Fundamental Rights of the European Union, and in particular paragraph 2 thereof, which lays down that "every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave".

(14a) Whereas the implementation of this Directive would maintain the general level of protection afforded to workers as regards health and safety at work.

(15) In accordance with the principles of subsidiarity and proportionality referred to in Article 5 of the Treaty, the objectives of the action envisaged above cannot be achieved adequately by the Member States, in so far as this involves modifying a Community legal act in force.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2003/88/EC is hereby amended as follows:

1. In Article 2, paragraphs 1a, 1aa and 1b shall be added:

"1a. "on-call time": period during which the worker has the obligation to be available at the workplace in order to intervene, at the employer's request, to carry out his activity or duties.

1aa. "workplace": the place or places where the worker normally carries out his activities or duties and which is determined in accordance with the terms laid down in the employment relationship or contract applicable to the worker.

1b. "inactive part of on-call time": period during which the on-call worker is on call within the meaning of paragraph 1a but is not required by his employer to effectively carry out his activity or duties."

2. The following Article 2a shall be added:

"Article 2a
On-call time

The inactive part of on-call time shall not be regarded as working time unless national law or, in accordance with national law and/or practice, a collective agreement or an agreement between the social partners decides otherwise.

The inactive part of on-call time may be calculated on the basis of an average number of hours or a proportion of on-call time, taking account of experience in the sector concerned, by collective agreement or agreement between the social partners or by national legislation following consultation of the social partners.

The inactive part of on-call time shall not be taken into account in calculating the rest periods laid down in Articles 3 (daily rest period) and 5 (weekly rest period), unless otherwise provided for

(a) in a collective agreement or an agreement between the social partners;

or

(b) by means of national legislation following consultation of the social partners.

The period during which the worker effectively carries out his activity or duties during on-call time shall always be regarded as working time."

3. The following Article 2b shall be added:

"Article 2b
Reconciliation of work and family life

The Member States shall, encourage the social partners at the appropriate level, without prejudice to their autonomy, to conclude agreements aimed at improving reconciliation of work and family life.

The Member States shall ensure, without prejudice to Directive 2002/14/EC and in consultation with the social partners, that employers inform workers in due time of any substantial changes in the pattern or organisation of their working time.

Taking into account workers' needs for flexibility in their working hours and patterns, the Member States shall, in accordance with national practices, also encourage employers to examine requests for changes to such working hours and patterns, subject to business needs, and to both employers' and workers' needs for flexibility."

4. Deleted.

5. Article 17 shall be amended as follows:

(a) In paragraph 1, the terms "Articles 3 to 6, 8 and 16" shall be replaced by "Articles 3 to 6, 8 and 16(a) and (c)".

(b) In Article 17(2), the terms "provided that the workers concerned are afforded equivalent periods of compensatory rest" shall be replaced by "provided that the workers concerned are afforded equivalent periods of compensatory rest within a reasonable period, to be determined by national legislation or a collective agreement or agreement concluded between the social partners".

(c) In paragraph 3, in the introductory sentence, the terms "Articles 3, 4, 5, 8 and 16" shall be replaced by "Articles 3, 4, 5, 8 and 16(a) and (c)".

(d) Paragraph 5 shall be amended as follows:

(i) The first indent shall be replaced as follows:

"In accordance with paragraph 2 of this Article, derogations may be made from Article 6 in the case of doctors in training, in accordance with the provisions set out in the second to the sixth indents of this paragraph."

(ii) The final indent shall be deleted.

6. In Article 18, third subparagraph, the expression "on condition that equivalent compensating rest periods are granted to the workers concerned" shall be replaced by "on condition that equivalent compensating rest periods are granted to the workers concerned within a reasonable period, to be determined by national legislation or a collective agreement or agreement concluded between the social partners".

7. Article 19 shall be replaced by the following:

"Without prejudice to Article 22a, paragraph (b) and by way of derogation from Article 16(b), Member States shall have the option, subject to compliance with the general principles relating to the protection of the safety and health of workers, of allowing, for objective or technical reasons, or reasons concerning the organisation of work, the reference period to be set at a period not exceeding 12 months:

(a) by collective agreement or agreement between the social partners, as laid down in Article 18;

(b) by legislative or regulatory provision following consultation of the social partners at the appropriate level.

In making use of the option in paragraph (b), Member States shall ensure that employers respect their obligations as laid down in Section II of Directive 89/391/EC."

8. Deleted.

9. Article 22 shall be amended as follows:

"Article 22
Miscellaneous provisions

1. Although the general principle is that the working week in the EU should consist of a maximum of 48 hours and that in practice it is an exception for workers in the EU to work longer, Member States may decide not to apply Article 6 provided that they take the necessary measures to ensure the effective protection of the safety and health of workers. Implementation of this option, however, shall be expressly laid down by collective agreement or agreement between the social partners at the appropriate level or by national law following consultation of the social partners at the appropriate level.

1a. In any event, Member States wishing to make use of this option shall take the necessary measures to ensure that:

(a) no employer requires a worker to work more than 48 hours over a seven-day period, calculated as an average for the reference period referred to in Article 16(b), unless he has first obtained the worker's agreement to perform such work. This agreement shall be valid for a period not exceeding one year and shall be renewable.

(b) no worker shall be subjected to any detriment by his employer because he is not willing to give his agreement to perform such work or because withdraws his agreement for any reason;

(c) an agreement given at:

(i) the time of the signature of the individual employment contract; or

(ii) during the first four weeks of the employment relationship

is null and void;

(d) no worker who has given an agreement under this Article shall, over a period of seven days, work more than**:**

(i) 60 hours, calculated as an average over a period of 3 months, unless otherwise provided for in a collective agreement or an agreement between the social partners; or

(ii) 65 hours, calculated as an average over a period of 3 months, in the absence of a collective agreement and when the inactive part of on-call time is regarded as working time in accordance with Article 2a;

(e) every worker is entitled to withdraw his agreement to perform such work during the first six months after signature of a valid agreement or during and up to three months after the probation period specified in his contract is completed whichever is longer with immediate effect, by informing his employer in due time in writing that he is doing so. Thereafter, the employer may require the worker to give, in writing, a period of notice, which shall not exceed two months;

(f) the employer keeps up-to-date records of all workers who carry out such work and adequate records for establishing that the provisions of this Directive are complied with;

(g) the records are placed at the disposal of the competent authorities, which may, for reasons connected with the safety and/or health of workers, prohibit or restrict the possibility of exceeding the maximum weekly working hours;

(h) the employer provides the competent authorities at their request with information on cases in which agreement has been given by workers to perform work exceeding 48 hours over a period of seven days, calculated as an average for the reference period referred to in Article 16(b), and adequate records for establishing that the provisions of this Directive are complied with.

1b. Subject to compliance with the general principles relating to the protection of the safety and health of workers, where a worker is employed by the same employer for a period, or periods, that do not exceed 10 weeks in total over a period of 12 months, the provisions in paragraph 1a, subparagraphs (c)(ii) and (d), shall not apply."

10. The following Article 22a shall be added:

"Article 22a
Special provisions

When a Member State makes use of the option provided for by Article 22**:**

(a) the option set out under Article 19(b) shall not apply.

(b) That Member State may, by way of derogation from Article 16 (b), allow by means of laws, regulations or administrative provisions, for objective or technical reasons, or reasons concerning the organisation of work, the reference period to be set at a period not exceeding 6 months.

Such a reference period shall be subject to compliance with the general principles relating to the protection of the health and safety of workers, and shall not affect the three-month reference period applicable under Article 22(1a)(d) to workers who have entered into a valid subsisting agreement under Article 22(1a)(a)."

11. Article 24 is modified as follows:

"Article 24
Reports

1. Member States shall communicate to the Commission the texts of the provisions of national law already adopted or being adopted in the field governed by this Directive.

2. Member States shall report to the Commission every five years on the practical implementation of the provisions of this Directive, indicating the viewpoints of the two sides of industry.

The Commission shall inform the European Parliament, the Council, the European Economic and Social Committee and the Advisory Committee on Safety and Health at Work thereof.

3. Every five years from 23 November 1996 the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive taking into account paragraphs 1 and 2 of this Article."

12. The following Article 24a shall be added:

"Article 24a
Evaluation report

1. Not later than three years after the date referred to in Article 3 of Directive (2008/-/EC):

(a) Member States which make use of the option under Article 22(1) shall inform the Commission of the reasons, the sector(s), activities and numbers of workers concerned, after consulting the social partners at national level. The report by each Member State shall give information on its effects on workers´ health and safety as well as indicating the viewpoints of the social partners at appropriate level, and shall also be submitted to the national social partners.

(b) Member States which make use of Article 19(b) shall inform the Commission of the manner in which they have implemented this provision, and of its effects on workers' health and safety.

2. Not later than four years after the date laid down in Article 3 of Directive (2008/-/EC), the Commission, after consulting the European Social Partners, shall submit, to the Council, the European Parliament and the European Economic and Social Committee a report on:

(a) the use of the option under Article 22(1) and the reasons for that use, and

(b) other factors which may contribute to long working hours, such as the use of Article 19(b).

The report may be accompanied by appropriate proposals to reduce excessive working hours, including the use of the option under Article 22(1) taking into account its impact on the health and safety of the workers covered by this option.

3. The Council will, on the basis of the Commission report, evaluate the use of the options provided by the Directive and namely those allowed by Articles 19(b) and 22.

Taking into account this evaluation, and not later than five years after the date laid down in Article 3 of Directive (2008/-/EC), the Commission may, if appropriate, submit a proposal to the Council and the European Parliament to revise the Directive, including the option laid down under Article 22(1)"

Article 2

Member States shall lay down rules on sanctions 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 3 at the latest and any subsequent amendment in good time. They shall, in particular, ensure that workers and/or their representatives have adequate means of enforcing the obligations under this Directive.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by […][1] 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.

   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.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

[1] Three years after the entry into force of the Directive.

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at ……., […]

For the European Parliament	*For the Council*
The President	*The President*

COUNCIL OF THE EUROPEAN UNION

Brussels, 11 June 2008

10587/08

Interinstitutional File: 2002/0072 (COD)

SOC 358
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COVER NOTE

from :	Council Secretariat
to :	Delegations
No. prev. doc. :	10357/08 SOC 346 CODEC 727 + REV 1 (ro)
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 on a common position**

Delegations will find attached the text on which the Council (EPSCO) reached a political agreement by a qualified majority on 9/10 June 2008.

ANNEX

Amended proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

on temporary agency work

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 Commission[1],

Having regard to the opinion of the Economic and Social Committee[2],

Having regard to the opinion of the Committee of the Regions[3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[4],

Whereas:

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1 OJ C of , p. .
2 OJ C of , p. .
3 OJ C of , p. .
4 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)[1], 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 Commission[2], 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.

[1] UNICE changed its name to BUSINESSEUROPE in January 2007.
[2] 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 1991[1] 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.

[1] 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 or 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 1996[1] concerning the posting of workers in the framework of the provision of services.

(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.

[1] OJ L 18 of 21.1.1997, p. 1.

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.

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;

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 4

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.

CHAPTER II

EMPLOYMENT AND WORKING CONDITIONS

Article 5

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 provisions.

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 assignments.

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. As long as an adequate level of protection is provided for temporary agency workers, 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, establish arrangements concerning the basic working and employment conditions which derogate from the principle established in paragraph 1. Such arrangements may include a qualifying period for equal treatment.

The arrangements referred to in this paragraph shall be in conformity with Community legislation and shall be sufficiently precise and accessible to allow the sectors and firms concerned to identify and comply with their obligations and, in particular, Member States shall specify in application of Article 3(2) whether the occupational social security schemes, including pension, sick pay or financial participation schemes are included in the basic working and employment conditions in paragraph 1. Such arrangements shall also be without prejudice to agreements at national, regional, local or sectoral level that are no less favourable to workers.

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.

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.

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 [three years after the entry into force of the Directive] 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 […][1] at the latest.

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.

[1] Three years after the entry into force of the Directive.

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	*For the Council*
The President	*The President*