

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2002/0072(COD) Procedure completed
Temporary agency work	
Subject 4.15.03 Arrangement of working time, work schedules 4.15.12 Workers protection and rights, labour law	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	EMPL Employment and Social Affairs		24/06/2008
		PSE DÉSIR Harlem	
	Former committee responsible		
	EMPL Employment and Social Affairs		23/04/2002
		PSE VAN DEN BURG Ieke	
	Former committee for opinion		
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	The committee decided not to give an opinion.	
	ECON Economic and Monetary Affairs	The committee decided not to give an opinion.	
	JURI Legal Affairs and Internal Market		10/09/2002
	PPE-DE GARGANI Giuseppe		
FEMM Women's Rights and Equal Opportunities		18/04/2002	
	PPE-DE MANN Thomas		
Council of the European Union	Council configuration	Meeting	Date
	General Affairs	2888	15/09/2008
	Employment, Social Policy, Health and Consumer Affairs2876		09/06/2008
	Employment, Social Policy, Health and Consumer Affairs2837		05/12/2007
	Employment, Social Policy, Health and Consumer Affairs2606		04/10/2004
	Employment, Social Policy, Health and Consumer Affairs2512		02/06/2003
	Employment, Social Policy, Health and Consumer Affairs2492		06/03/2003
	Employment, Social Policy, Health and Consumer Affairs2454		08/10/2002
	Employment, Social Policy, Health and Consumer Affairs2431		03/06/2002
European Commission	Commission DG	Commissioner	
	Employment, Social Affairs and Inclusion	ŠPIDLA Vladimír	

Key events			
20/03/2002	Legislative proposal published	COM(2002)0149	Summary
08/04/2002	Committee referral announced in Parliament, 1st reading		
03/06/2002	Debate in Council	2431	
08/10/2002	Debate in Council	2454	
21/10/2002	Vote in committee, 1st reading		Summary
21/10/2002	Committee report tabled for plenary, 1st reading	A5-0356/2002	
20/11/2002	Debate in Parliament		
21/11/2002	Decision by Parliament, 1st reading	T5-0562/2002	Summary
28/11/2002	Modified legislative proposal published	COM(2002)0701	Summary
06/03/2003	Debate in Council	2492	Summary
02/06/2003	Debate in Council	2512	Summary
04/10/2004	Debate in Council	2606	Summary
05/12/2007	Debate in Council	2837	Summary
15/09/2008	Council position published	10599/2/2008	Summary
22/09/2008	Committee referral announced in Parliament, 2nd reading		
07/10/2008	Vote in committee, 2nd reading		Summary
08/10/2008	Committee recommendation tabled for plenary, 2nd reading	A6-0373/2008	
20/10/2008	Debate in Parliament		
22/10/2008	Results of vote in Parliament		
22/10/2008	Decision by Parliament, 2nd reading	T6-0507/2008	Summary
19/11/2008	Final act signed		
19/11/2008	End of procedure in Parliament		
05/12/2008	Final act published in Official Journal		

Technical information	
Procedure reference	2002/0072(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC Treaty (after Amsterdam) EC 137-p2-a2/3
Stage reached in procedure	Procedure completed
Committee dossier	EMPL/6/67398

Documentation gateway					
Legislative proposal		COM(2002)0149 , OJ C 203 27.08.2002, p. 0001 E	20/03/2002	EC	Summary
Economic and Social Committee: opinion, report		CES1027/2002 OJ C 061 14.03.2003, p. 0124	18/09/2002	ESC	
Committee report tabled for plenary, 1st reading/single reading		A5-0356/2002	21/10/2002	EP	
Text adopted by Parliament, 1st reading/single reading		T5-0562/2002 OJ C 025 29.01.2004, p. 0222-0368 E	21/11/2002	EP	Summary
Modified legislative proposal		COM(2002)0701	28/11/2002	EC	Summary
Council position		10599/2/2008	15/09/2008	CSL	Summary
Commission communication on Council's position		COM(2008)0569	18/09/2008	EC	Summary
Committee draft report		PE412.354	29/09/2008	EP	
Committee recommendation tabled for plenary, 2nd reading		A6-0373/2008	08/10/2008	EP	
Text adopted by Parliament, 2nd reading		T6-0507/2008	22/10/2008	EP	Summary
Draft final act		03705/2008/LEX	19/11/2008	CSL	
Follow-up document		COM(2014)0176	21/03/2014	EC	Summary
Follow-up document		SWD(2014)0108	21/03/2014	EC	

Additional information	
National parliaments	IPEX
European Commission	EUR-Lex

Final act
Directive 2008/104 OJ L 327 05.12.2008, p. 0009 Summary

Temporary agency work

PURPOSE: to provide a minimum EU-wide level of protection to temporary agency workers. **CONTENT:** whilst EU legislation for fixed-term contracts already exists, the same can not be said of temporary workers. Discussions on EU-wide minimum standards relating to temporary workers has been a matter of discussion for at least twenty years. Yet it is only in the past year that sufficient common ground has been found amongst the social partners to allow for this draft proposal. The legal basis for the proposed legislation is Article 137 of the European Treaties relating to an improvement in working conditions. It takes into account the principle of subsidiarity and proportionality and is fully in line with the conclusions of the Lisbon Council on improved employment possibilities and conditions. In preparing legislation on temporary workers the European Commission depended on the advice of a study carried out by the European Foundation for the Improvement of Living and Working Conditions. This study estimates that the share of temporary work in Europe has been increasing steadily for the past ten years, with an annual growth rate of 10% between 1991 and 1998. It accounts for an average of 2.1 million people (expressed in full-time jobs) or 1.4% of total employment in Europe in 1998. The nature of temporary work varies considerably from Member State to Member State. For example, in the United Kingdom 80% of activities of temporary agencies are in the service and public service sector. By contrast, in France 75% of people working temporarily do so in a manufacturing, construction and public works capacity. Equally, the legal structure for temporary workers varies considerably from very loose legal constructions (e.g United Kingdom, Ireland) to countries where much stricter provisions exist (e.g Spain, Belgium). The specific aim of this new legislation is to clarify and harmonise the conditions for posting workers at national level. It can be seen as an extension of arrangements already in force for transnational posting of temporary workers. Specifically it seeks to: - Introduce the general principle of "non-discrimination" for temporary workers. Under these provisions a temporary worker may not be treated worse, in terms of basic working conditions, than a comparable worker who is defined as a worker in the user undertaking in an identical or similar job. - A restriction can be made if there is objective justification for a difference in treatment. This is the case when circumstances dictate that a

temporary worker is in a different situation from a normally comparable worker and cannot therefore be treated in the same way. - An exemption may be made when temporary workers have a permanent contract with an agency. - An exemption may be made in cases where social partners, by means of a collective agreement, have already established working conditions. An adequate level of protection must be assured. - Member States must periodically review existing restrictions or prohibitions to temporary work. - Offering temporary workers the chance to seek full-time positions. Temporary workers must be informed of vacant positions, for example. - Temporary workers will have access to the social services of the user undertaking and to training organised through the temporary agency and/or the user undertaking. - The user undertaking must inform its workers' representatives if temporary workers are to be employed.?

Temporary agency work

The committee adopted the report by IJsselstein (PES, NL) amending the proposal under the 1st reading of the codecision procedure. The main amendments were as follows: - the need for better basic protection of temporary agency workers from the first day of their assignment and changes to the rules against discrimination between temporaries and in-house staff; - as regards the directive's objectives, the committee stressed the need to improve agency workers' basic statutory employment rights and social protection, which would help inter alia to improve the appeal of temporary agency work; moreover, it stated that the temporary agency work sector should contribute to job creation by providing undertakings with temporary human resources without detrimental effects on existing permanent workforces; it also inserted a third objective, namely, to recognise temporary work agencies as employers, whilst ensuring that their activities do not compromise existing standards in user companies and sectors; - as regards the proposed "non-discrimination" principle, the committee said that instead of having to identify a "comparable worker", the focus should be on ensuring that agency employees' working conditions while on assignment are at least as good as those they would have if hired directly by the user firm; - as regards derogations from the equal treatment principle, the committee deleted the possibility of a general derogation for assignments of less than six weeks and limited the proposed exemption for permanent contracts to pay. This exemption was also extended to other contracts lasting at least 18 months but the committee insisted on greater protection regarding the payment of workers between assignments; - on the question of restrictions on temporary work, the committee broadened the scope of the proposed reviews by Member States of any limitations or bans on such work while at the same time extending the grounds on which restrictions can be justified (e.g. protection of "temps", health and safety and other risks to certain groups of workers or sectors); - the committee inserted a new provision requiring Member States to prevent the use of temporary agency workers for strike-breaking.?

Temporary agency work

The European Parliament adopted a resolution drafted by its rapporteur IJsselstein (PES, Netherlands) making several amendments to the draft proposal. (Please refer to the document dated 21/10/02). As well as the points listed in that document, Parliament inserted the following key changes: -an additional recital stating that, notwithstanding that social security protection is not an explicit part of the provisions of the directive, social protection systems need to be capable of adaptation to new forms of work in order to provide adequate protection to those engaged on such work. Particular attention needs to be given to the problems that arise for temporary agency workers as a result of, for example, broken work histories, multiple employment situations, and short contracts on the continuity of employment rights; -another recital acknowledges the importance of temporary agency workers for flexible organisation in companies, but states that such workers should not be regarded as 'rationalisation factors' and misused to reduce the user undertaking's permanent workforce or replace women with equally qualified men. -Member States will, within two years of the adoption of the directive and thereafter every five years, after consulting the social partners in accordance with legislation, collective agreements and national practices, review all existing prohibitions and specific administrative provisions on temporary agency workers, and discontinue them if necessary; -within two years of adoption of the directive, and after consultation with social partners, Member States will extend social legislation of temporary workers who are not adequately covered and clarify labour law in relation to the status of such workers; -basic protection as regards essential working conditions and employment protection which is mainly of interest to women, as well as protection against intimidation and discrimination, maternity protection and maternity and parental leave, must be available from day one for all temporary agency workers, whatever type of contract they have; -temporary agency workers must have the same access to the collective facilities of the user undertaking, such as childcare facilities, as apply to workers directly employed by the user undertaking for the same duration unless there are objective reasons against this; -such workers may benefit from activities of workers representative bodies and internal complaints procedures, in the user company; -where the principle of equal treatment is not part of the law or practice of a Member State, such a Member State may, after consultation with the social partners, decide not to apply for 5 years, the principle with respect to pay or specific pay elements for workers assigned to the same user undertaking for a total of not more than six weeks in a reference period of one year, so long as adequate level of pay is provided from day one. Member States must prevent misuse of this provision, especially if workers are assigned repeatedly to the same user undertaking, and will inform the Commission of the measures taken against abuse.?

Temporary agency work

The Commission accepts many of the amendments proposed by the European Parliament, including: - adding the definition of a temporary worker; - deleting the definition of a temporary worker; - adding the definition of a temporary posting; - adding the definition of a user undertaking; - specifying that it is up to the Member State to define pay; - specifying workers who cannot be excluded from the scope of the Directive; - adding a provision that temporary workers may not replace striking workers in the user undertaking; - Member States must review all restrictions and prohibitions, but the Commission does not include a time scale for doing so; - restricting the exemption for permanent contracts to pay and requiring consultation of the social partners; - specifying how information on vacancies may be made public; - specifying social services at the user undertaking; - workers' representation may be determined by collective agreements; - introduction of a choice of the action open to workers - direct action or action through representatives.?

Temporary agency work

Following the informal exchange of views by Ministers over lunch, the President announced that there was general recognition of the importance of the issue and broad agreement on the need for a Directive on working conditions for temporary agency workers. However, due to the divergent views amongst delegations concerning legislation, the degree of regulation, the role of the Social Partners, as well as the relative importance and characteristics of temporary agency work in Member States, further work was required in order to reach a balanced political compromise. The President welcomed the constructive contributions made by delegations and stressed the objective of overcoming the current difficulties and reaching a political agreement in public deliberation at the next Council Meeting on 2-3 June 2003. Delegations agreed on the importance of continuing to examine the following outstanding issues with a view to reaching an agreement: - Review of restrictions and prohibitions on temporary work: the draft Directive requires Member States to review restrictions and prohibitions should it be verified that these are no longer justified. A large number of delegations wish to examine further this provision as it is expected to have implications on their existing national legislation or collective agreements concerning restrictions on the use of temporary workers. - Application of the principle of equal treatment: the proposal sets out the principle of equal treatment under which temporary workers should be given the same working conditions that would apply if they had been directly contracted by the user undertaking to carry out the same job. An exemption for temporary workers on assignments of a maximum period of 6 weeks is allowed in its provisions with regard to pay. Delegations question this exemption by either opposing it or requiring a longer period. - Temporary work as a labour market instrument: the draft Directive allows Member States not to apply its provisions to employment contracts concluded under special public or publicly funded programmes aimed at, inter alia, facilitating the integration of the long-term unemployed in the labour market. A few delegations would like the scope of this particular provision to be broader.?

Temporary agency work

The Council held a useful discussion on the proposal for a Directive concerning working conditions for temporary workers, which focused on a new compromise text from the Greek Presidency for a new article aimed at resolving the key outstanding issue of the nature and duration of the exemption to the principle of equal treatment. Delegations acknowledged the significant efforts made by the Presidency to resolve the outstanding questions, but it was recognised that fundamental differences remained. The President therefore concluded that the Council was unable at this stage to reach political agreement on a common position. Work on this dossier is to be continued on the basis of the following three parameters for a balanced political compromise: - how to address the need for a specific derogation with a view to fostering the insertion of the unemployed into the labour market (article 1); - reviewing and possibly removing restrictions to temporary agency work (article 4); - the nature of the exemption from the principle of equal treatment and the length of the "qualifying period" (article 5(4)/11(3) new). It should be recalled that, with regard to the application of the principle of equal treatment, the Commission's amended proposal set out the general principle of equal treatment under which temporary workers should be given the same basic working conditions that would apply if they had been directly contracted by the user undertaking to carry out the same job. An exemption for temporary workers on assignments for a period not exceeding 6 weeks ("qualifying period") was envisaged with respect to pay. In a spirit of compromise, a clear majority of delegations indicated their willingness to accept a transitional period of five years after the date of implementation of the Directive during which an exemption to the principle of equal treatment could be granted in view of the specific conditions of Member States' labour markets. However, four delegations considered that such an exemption should be permanent. With a view to bridging the gap between these positions, the Presidency compromise text provided for the exemption to continue pending a future decision by the Council and the European Parliament. However, this alternative was unacceptable to the majority of delegations and was only acceptable to the four other delegations if the "qualifying period" was at least 6 months.?

Temporary agency work

The Council held a policy debate on the draft directive. Discussion focused mainly on the outstanding issue of equal pay and conditions for temporary workers. It was recognised that further efforts would be needed to enable the Council to reach an acceptable compromise for all delegations. Accordingly, the Presidency undertook to pursue its reflections as a matter of urgency, taking especially into account the link which the European Parliament has established between this proposal and the recent Working Time proposal. The draft directive aims at striking a balance between flexibility and job security. It completes a package of measures aimed at regulating working conditions for so-called "atypical" workers. Temporary work is seen as a key factor in meeting the requirements of the reform strategy laid down by the Lisbon European Council in March 2000, as it allows for both the growth of employment and increased competitiveness.

Temporary agency work

The Council sought to reach political agreement on the draft Directive aimed at establishing working conditions for temporary agency workers.

Already, in July, the Presidency announced that it would consult with different Member States in order to evaluate the conditions for balanced solutions concerning the legislative files under discussion in the (EPSCO) Council.

After extensive bilateral consultations with different Member States and the Commission, the Presidency decided to present compromise proposals for the Directive on temporary agency workers as well as the Directive on working time (see [COD/2004/0209](#)). Both draft directives had been discussed separately, but the Presidency considered they were linked since they deal with central aspects of the regulation of contemporary labour markets.

Given the difficulties in finding separate solutions for each of the files, the Presidency decided that there would be added value in working on a simultaneous and integrated solution, thus allowing Member States to find a balance between the two directives that would be acceptable from the political point of view.

This joint approach was widely accepted by a large majority of Member States, in the Council. The connection between the two directives, and more specifically the proposals presented by the Presidency, was considered a solid and viable basis for negotiation towards an agreement on both.

The Presidency explored different solutions, within the balanced framework underlying the proposals, to reach an enlarged consensus that would be politically desirable.

Bearing in mind the fact that this linked proposal was still very recent, as well as the sensitive nature of these directives for some Member States and the importance of exploring all attempts to reach as broad an agreement as possible before the final decision was taken, the Council agreed that the best option at this moment was to postpone a decision, in order to further pursue the dialogue.

Nevertheless, the Presidency noted that a vast majority of Member States had spoken in favour of an integrated solution for the directives, building an overall equilibrium between the two. Thus, and respecting the dominant orientation within the Council, the Presidency stressed that this openness to dialogue and consensus sought only to strengthen the conditions for a solution that reflected the position of a clear and strong majority. The proposals presented are a major step forward, because they now open up an appropriate way of reaching a solution on these files. There is a real margin for political decision in 2008, building on the solid basis for progress that the Council has just established. The forthcoming presidencies and the Commission might proceed with efforts to achieve a positive and final outcome on both directives, given the importance of the issues at stake and the specific needs of many Member States.

Progress on the 'temporary agency workers' Directive: the draft Directive aims to establish, at European level, a common legal framework to regulate temporary agency work. It seeks to strike a balance between flexibility and job security, while completing a package of measures aimed at regulating working conditions for so-called "atypical" workers. It will, in its turn, be complemented by Directive 91/383/EEC of 25 June 1991, supplementing the measures to encourage improvements in safety and health at work.

The draft Directive would apply to workers who have an employment relationship with a temporary agency and who would perform temporary work under the supervision and direction of a user undertaking. It aims to ensure the protection of temporary agency workers and to improve the quality of agency work by ensuring, in particular, that the principle of equal treatment in relation to workers recruited by the user undertaking to occupy the same job is applied. Temporary agencies would be recognised as employers.

The main outstanding issues may be summarised as follows:

• prohibitions and restrictions on temporary agency work, in particular, their review or removal;

• the principle of equal treatment, possible exceptions to that principle and the maximum length of assignments to which such exceptions can apply.

Temporary agency work

The Council adopted, by qualified majority, a common position with a view to the adoption of an amended proposal for a Directive of the European Parliament and the Council on temporary agency work. The Belgian, Hungarian, Maltese and Portuguese abstained.

The common position includes a majority of the amendments (26 in total) resulting from Parliament's first reading of the Commission's proposal.

The general structure of the common position is in line with the general structure of the Commission's amended proposal. Specifically, the Council accepted an amendment to the title of the Directive, three amendments to the recitals as well as a number of amendments to the following articles: Article 1 on the scope, Article 2 on the aim of the Directive, Article 3 on definitions, Article 4 on the review of restrictions and prohibitions, Article 5 on the principle of equal treatment, Article 6 on access to employment, collective facilities and vocational training and Article 7 on the representation of temporary agency workers.

The main differences from the Commission's amended proposal are as follows:

Review of restrictions and prohibitions on the use of temporary workers (Article 4): while essentially following the spirit of the Parliament's amendment, the Council added a new paragraph concerning the review of agreements negotiated by the social partners. The Council considered that, in order to respect their autonomy, the social partners should themselves review whether the restrictions and prohibitions negotiated by them were justifiable on the grounds set out in the first paragraph of Article 4. The Council did not consider it necessary to retain an explicit reference to the discontinuation of unjustified restrictions and prohibitions.

Principle of equal treatment (Article 5): while generally following the Commission's amended proposal, the Council modified the text. The Council also considered that the principle of equal treatment from day one should be the general rule. Any treatment of temporary agency workers differing from that principle should be agreed by the social partners, either through collective bargaining or through social partner agreements concluded at national level. In the light of the modifications made to the text, a specific exemption for short-term contracts (six weeks or shorter), as envisaged in the Commission's amended proposal, was therefore no longer considered necessary or appropriate.

The common position reflects those of the Parliament's amendments which stress the importance of the role of social partners in negotiating arrangements on working and employment conditions. It also echoes the Parliament's concerns in relation to the prevention of misuse.

Penalties (Article 10): the common position includes a new paragraph concerning measures the Member States are expected to take in order to ensure compliance with the Directive by temporary work agencies and user undertakings.

Implementation (Article 11): the Council considered that the Member States would need three years to implement the Directive, while the Commission had proposed a two-year implementation period.

In addition, a number of recitals have been updated and modified, in order both to explain the modifications introduced by the Council to the Commission's amended proposal and to describe developments since the amended proposal was published in 2002. For example, references to the relaunch of the Lisbon Strategy, in 2005, and to the agreed common principles of flexicurity, endorsed by the European Council in December 2007, were included in the recitals.

Following the Commission's amended proposal, the Council did not accept the amendment which would have extended the possibility of not applying the Directive to employment contracts or relationships concluded under specific training programmes without any public support.

It also rejected an amendment calling for a comprehensive review of national legislations concerning temporary agency workers. The Council considered that this would be outside the scope of the Directive. Another two amendments to Article 5 were considered to be superfluous, one on non-discrimination and the other on safety and health at work and on safety training.

Temporary agency work

The Commission states that a number of European Parliament's amendments, taken into account fully, partly or in spirit in the Council's common position and the Commission's amended proposal.

Recitals: specifying the links between this proposal and Directive 1999/70 of 28 June 1999 on fixed-term work; adding a provision stipulating that temporary agency workers may not replace striking workers in the user undertaking.

Scope: rewording the scope to illustrate more clearly the triangular nature of temporary agency work; confirming that both user undertakings and temporary work agencies are covered by the Directive.

Aim: reinforcing the balanced aims of the Directive.

Definitions: deleting the definition of a comparable worker from the definitions in Article 3; adding the definition of a temporary agency; adding the definition of a user undertaking; an amendment stipulating that it is up to the Member States to define pay and specifying workers who cannot be excluded from the scope of the Directive.

Review of restrictions or prohibitions: extending the obligation on the Member States to review restrictions or prohibitions pertaining only to certain categories of workers or certain branches to include all restrictions or prohibitions; extending the scope of justifications for prohibitions/restrictions; specifying that national requirements concerning the registration and monitoring of temporary work agencies are not prohibitions or restrictions within the meaning of the Directive.

The principle of equal treatment: acceptance of the part rewording the principle of non-discrimination; restricting the exemption to remuneration and requiring consultation of the social partners; acceptance of the part on prior consultation of the social partners and enabling them to uphold existing collective agreements.

Access to employment, collective facilities and vocational training: amendment specifying how information on vacancies may be made public; arrangements whereby temporary work agencies may be recompensed for services rendered to user enterprises; specifying the scope of the prohibition on charging fees to workers; specifying the scope of the amenities and collective facilities in the user enterprise to which temporary agency workers should be afforded access.

Representation of temporary workers: taking account of the fact that workers' representation may be determined by collective agreements.

Other amendments which have been accepted by the Commission, but not adopted in the common position aim to: specify that implementation of Article 5 (principle of equal treatment) through an agreement between the social partners should be in line with national practice; restrict exemption to pay in the case of short-term contracts; leave the choice to workers as to whether to pursue direct action or action through their representatives where the provisions of the Directive are not being complied with.

Whilst the common position does not reflect all of the amendments proposed by Parliament and incorporated into the Commission's amended proposal, the majority of Parliament's amendments have nonetheless been adopted either in whole, in part or in spirit. In general it should be stressed that the common position considerably enhances the text of the initial proposal and responds to the European Parliament's desire to ensure that the principle of equal treatment, as regards basic working and employment conditions, between temporary agency workers and the workers directly recruited by user companies should have effect as of day one of their assignments. Progress has been made on several issues such as; the direct application of the principle of equal treatment for agency workers from the first day of an assignment without any exception for short-term assignments (so-called "grace period"), the clarification of definitions, and either consultation with, or involvement of, the social partners as a condition applying to the various derogations that permit some deviation from the equal treatment principle.

Prohibitions or restrictions on the use of temporary agency work can only be maintained after the implementation of the Directive if they are justified on grounds of general interest. At that stage, any continuing prohibitions or restrictions must be subject of review and made the subject to a report to the Commission. In the interests of subsidiarity, differing national practices as regards labour market conditions and industrial relations practice among the Member States can be accommodated through affording scope for derogation from the principle of equal treatment by collective agreement or - under specific conditions - by agreement between the national social partners.

Temporary agency work

The Committee on Employment and Social Affairs adopted a report drafted by Harlem DESIR (PES, FR) and approved the Council common position for adopting a directive of the European Parliament and of the Council on temporary agency work.

Temporary agency work

The European Parliament adopted a legislative resolution approving the Council's common position for adopting a directive of the European Parliament and of the Council on temporary agency work. The recommendation for second reading (under the codecision procedure) had been tabled for consideration in plenary by Harlem DESIR (PES, FR) on behalf of the Committee on Employment and Social Affairs.

Temporary agency work

PURPOSE: to provide a minimum EU-wide level of protection to temporary agency workers.

LEGISLATIVE ACT: Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work.

CONTENT: the aim 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 the text, is applied to temporary agency workers, and by recognising temporary work agencies as employers, while taking into account the need to establish 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.

Scope: the Directive applies to workers with a contract of employment or employment relationship with a temporary work agency who are assigned to user undertakings to work temporarily under their supervision and direction. It applies to public and private undertakings which are temporary-work agencies or user undertakings engaged in economic activities whether or not they are operating for gain. 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.

Review of restrictions or prohibitions: prohibitions or restrictions on the use of temporary agency work must be 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. By 5 December 2011, Member States shall, after consulting the social partners in accordance with national legislation, collective agreements and practices, 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 the text.

The principle of equal treatment: 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.

As regards pay, Member States may provide that an exemption be made to the principle of equal treatment where temporary agency workers who have a permanent contract of employment with a temporary-work agency continue to be paid in the time between assignments.

In addition, Member States must specify whether occupational social security schemes, including pension, sick pay or financial participation schemes are included in the basic working and employment conditions. Such arrangements shall also be without prejudice to agreements at national, regional, local or sectoral level that are no less favourable to workers.

The directive sets out provisions on access to employment, collective facilities and vocational training, as well as provisions on the representation of temporary agency workers.

Review by the Commission: by 05/12/2013, the Commission must review the application of the Directive with a view to proposing, where appropriate, the necessary amendments.

ENTRY INTO FORCE: 05/12/2008.

IMPLEMENTATION: 05/12/2011.

Temporary agency work

The Commission presents a report on the application of Directive 2008/104/EC on temporary agency work.

To recall, the purpose of this text 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 is applied to temporary agency workers, and by recognising temporary-work agencies as employers, while taking into account the need to establish a suitable framework for the use of temporary agency work with a view to contributing effectively to job creation and to the development of flexible forms of working.

In particular, the Directive:

- establishes the principle of equal treatment in user undertakings, while allowing for certain limited derogations under strict conditions;
- provides for a review by the Member States, during the transposition period, of restrictions and prohibitions on the use of agency work;
- improves agency workers access to permanent employment, to collective facilities in user undertakings and to training;
- includes provisions on the representation of agency workers.

Objectives of the report: the aim of this report is twofold:

- it provides an overview of how Member States have implemented the Directive and highlights key problems;
- it examines whether experience gained in applying the Directive, two years after the end of its transposition period, may justify any amendments to the text currently in force.

State of transposition: the report was drawn up on the basis of the Commission's examination of Member States provisions implementing the Directive. Member States were under a duty to transpose the Directive into national law by 5 December 2011.

The report notes that all Member States have transposed the Directive but that in a number of cases, transposition occurred late and only after the Commission had launched infringement proceedings. In early 2012, the Commission sent letters of formal notice for non-communication of transposition measures to 15 Member States. Later that year, reasoned opinions were sent to three Member States. In the Member State that was the last to transpose the Directive, the implementing legislation entered into force on 1 July 2013. Transposition was carried out in a variety of different ways. This is linked to the fact that before the Directive became applicable, temporary agency work was regulated by law in some Member States, mainly through collective agreements in others, or by a combination of both. Some Member States did not have a legal framework applicable to temporary agency work, so they specifically regulated this form of work for the first time while transposing the Directive.

The analysis presented in the report shows that, in general, the provisions of the Directive seem to have been correctly implemented and applied. However, the analysis has also shown that the twofold goal of the Directive has not yet been fully fulfilled. On one hand, the extent of the use of certain derogations to the principle of equal treatment may, in specific cases, have led to a situation where the application of the Directive has no real effects upon the improvement of the protection of temporary agency workers.

On the other hand, the review of restrictions and prohibitions on the use of temporary agency work has served, in the majority of cases, to legitimate the status quo, instead of giving an impetus to the rethinking of the role of agency work in modern, flexible labour markets.

The Commission will continue to closely monitor the application of the Directive, taking into account further developments in the fields of labour law and temporary agency work, to ensure that its goals are adequately achieved and that its provisions are completely and correctly

transposed in all Member States. In this context, the Commission will work in close contact with the Member States and the social partners within the working group that will follow the application of the Directive, as well as in other for a.

In addition, the Commission intends to tackle any problems in the implementation of the Directive with the appropriate means, including infringement proceedings where necessary. Complaints lodged with the Commission against Member States, petitions and preliminary questions to the Court of Justice may also constitute an important source of information as to national measures or practices that would be incompatible with the Directive.

Review of the Directive is not necessary: the Commission acknowledges the significant work that has been carried out on transposition of the Directive, in particular in Member States where there was either no legislation specifically regulating temporary agency work, or where the principle of equal treatment was recognised in national law for the first time.

As regards possible amendments to the Directive, the Commission states that more time is needed to accumulate experience in its application and to determine whether it has fully reached its objectives. There is as yet no case law of the Court of Justice on its application.

In that context and in the light of the Commissions own assessment of the application of the Directive, taking into account views expressed by Member States and European social partners during the consultation process for this report, the Commission takes the view that no amendments are necessary at this stage.