

Temporary agency work

2002/0072(COD) - 15/09/2008 - Council position

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.