Temporary agency work

2002/0072(COD) - 18/09/2008 - Commission communication on Council's position

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.