

# Temporary agency work

2002/0072(COD) - 21/03/2014 - Follow-up document

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 Commission's 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.**