



## European Parliament ensures temporary agency workers gain equal rights - UK workers after 12 weeks

The European Parliament adopted a directive on temporary agency work which enables temporary workers to be treated equally, from day one, with those of the employer company. However, following agreement reached in May this year between the social partners in the UK, agency workers will get the same pay and conditions as permanent staff after being employed for 12 weeks. This is the final stage in the process and Member States have a maximum of three years to transpose the directive.

The agreement in the UK means the Parliament can adopt the directive after being blocked in Council since 2002.

### UK position - 12 week rule

Under the proposed deal, Britain's 1.3 million agency workers will get the same pay and conditions as permanent staff after being employed for 12 weeks. The revised wording of the Agency Workers Directive allows the UK to implement the agreement between CBI and TUC which means that an agency worker is entitled to equal treatment (at least the basic working and employment conditions that would apply to the worker concerned if they had been recruited directly to occupy the same job) after 12 weeks in a given job.

### In the UK - pay covered by not occupational social security schemes.

According to the agreement between the CBI, TUC and the UK government, equal treatment will be defined to mean at least the basic working and employment conditions that would apply to the workers concerned if they had been recruited directly by that undertaking to occupy the same job. It will not cover occupational social security schemes.

Harlem Désir (PES, FR) rapporteur said: "Agency workers count for about 3 million employees in the EU and a turnover of some 75 billion euros. This directive shows the possibility of achieving social legislation when the expectations for a social Europe are strong."

### UK speakers in the debate on Monday 20 October in Strasbourg

On behalf of the Greens/EFA Group, Jean **LAMBERT** (UK) welcomed the agreement, saying she looked forward to its rapid implementation because it is a "step forward to a

social Europe". "I think it is very important that in the current climate we are actually making progress on workers' rights."

Speaking for the IND/DEM Group, Derek Roland **CLARK** (UK) wondered why the report, which had been "batted to and fro between the Commission and the Council" for six years, was being passed to the Parliament like a "hot potato" when "it is a bad move". "It will not help in these times of rising unemployment," he said, because paying inexperienced workers the same as skilled staff "discourages employee loyalty."

Roger **HELMER** (NI, UK) agreed, saying "this is a bad piece of legislation". He considered its main effect to be to "deny thousands upon thousands of people the right to work at all". "It makes our labour markets less competitive and less flexible. It damages our economies at the very time we can least afford to have them damaged," he said, later adding, "You could not ask for a clearer example of the way the EU subverts democracy in Member States."

Philip **BUSHILL-MATTHEWS** (EPP-ED, UK) first congratulated the rapporteur on the brevity of his report before thanking him on "using the argument of consensus" from stakeholders to get it through. "I think there is a moral for us as politicians here that, when the stakeholders themselves say that this is what they want, I do think we have a responsibility to try and facilitate that wherever possible." Mr Bushill-Matthews went on to thank the Minister for his reminder that the "Council put together this common position", adding that the message of this dossier is "let us move on".

Richard **HOWITT** (PES; UK) said he was "delighted" to have voted on, supported and campaigned for this directive, which was a "key priority for the Labour Government", for three reasons. Firstly, "temporary agency workers are vulnerable workers" and "they want better". Second, "abuses" by unregulated agencies" will end, and finally, "we have a social partnership agreement, rarely seen in Britain, between the British TUC and the Confederation of British Industry (CBI)".

## **Agreement after six years**

Parliament's first-reading amendments (report by Ieke van den Burg (PES, NL) sought in particular equal treatment in the "essential conditions" of work and employment, i.e. working hours, overtime, breaks, pay, etc (Article 3 of the Common Position).

The 2002 proposal for a directive, tabled in the context of the Lisbon jobs and growth strategy, established the principle of non-discrimination between temporary workers and those of the employer company, for temporary workers hired for more than six weeks. An exception to this principle was provided for in the case of collective agreements.

MEPs won an undertaking that equal treatment must apply from the first day. Furthermore, any exceptions to this principle will be limited, and must be governed by agreements between the social partners, collective negotiations or agreements reached by the social partners at national level.

EP amendments on health, safety and hygiene at work were not deemed "essential conditions", but these are already governed by Council Directive 91/383/EEC of 25 June 1991, stressed rapporteur Harlem Désir (PES, FR).

In adopting this report, the Employment and Social Affairs Committee expressed the wish that this six-year old proposal for a directive should enter into force without further delay.

## **Common position of the Council**

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.

## **Entry into force**

Member States must adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by three years after the entry into force, or must 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.

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