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Implementation by Member States of Council Directive 91/383/EC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship

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1. INTRODUCTION

1.1. The Directive

Council Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (hereinafter 'the Directive')[1] was adopted by the Council on 25 June 1991. It was adopted under Article 137 of the EC Treaty (ex Article 118a), which provides that the Council shall adopt, by means of Directives, minimum requirements for encouraging improvements, especially in the working environment, to guarantee a better level of protection of the safety and health of workers.

The Directive supplements the Framework Directive 89/391/EEC on health and safety at work[2]. Article 2(3) of the Directive provides that Directive 89/391/EEC and related individual directives within the meaning of Article 16(1) thereof are to apply in full to fixed-term workers and temporary workers without prejudice to more binding and/or more specific provisions set out in the Directive.

The Directive takes into account the specific situation of workers with a fixed-term employment relationship or a temporary employment relationship and the special nature of the risks they face in certain sectors. These risks justify special additional rules, particularly as regards the provision of information, training and medical surveillance of the workers concerned.

The purpose of the Directive is to ensure that workers with a fixed-term or temporary employment relationship are afforded, as regards safety and health at work, the same level of protection as that of other workers in the user undertaking and/or establishment.

1.2. Monitoring and assessing the Directive

The Directive provides in Article 10(3) that each Member State should submit every five years a report on the practical implementation of the Directive, setting out the points of view of workers and employers. Directive 2007/30/EC[1] has repealed Article 10(3) and 10(4) of the Directive and introduced a new Article 10*a* which provides for a new reporting scheme from the reporting period 2007-2012 onwards. Member States now have to report on the practical implementation of the Directive in the form of a specific chapter of the single report referred to in Article 17a(1), (2) and (3) of Directive 89/391/EEC.

However, the quality of the information provided by Member States has in many cases not been sufficient to allow proper monitoring of the Directive. In 2003 the Commission sent a questionnaire to help Member States fulfil their obligation under Article 10(3) of the Directive, but only some replied. The Commission then adopted a staff working paper on implementation of Directive 91/383/EEC pursuant to Article 10(3) of the Directive[3].

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1 OJ L 206, 29/07/1991, p. 19.

2 Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ 183, 29/6/89, p.1.

3 See Commission staff working paper on the implementation of Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed duration employment relationship or a temporary employment relationship, SEC(2004) 635.

In order to have a more complete overview of the implementation of the Directive, and improve the quality of the information available, the Commission launched two studies by independent experts. The first study[4] sought to analyse and assess the practical implementation of the Directive in the 15 Member States of the European Union before the 2004 enlargement ('the EU 15'), and a second study[5] analysed the transposition of the Directive by the 10 Member States which acceded to the European Union in 2004 ('the EU 10').

The Commission supplemented these studies with a new questionnaire addressed to the 27 Member States and the European social partners.

This paper makes use of the information made available through the two studies and the questionnaire. Its purpose is to analyse the transposition and the application of the Directive by all Member States and to assess its practical effects. It fulfils the Commission's obligation to monitor the implementation of the Directive and its practical effects.

Given the differing length of experience with the implementation of the Directive, the focus of the present text varies among Member States. Whereas for those Member States where the Directive has been implemented for more than 18 years, the emphasis in this working paper is laid on its practical implementation in order to identify any difficulties or shortcomings with respect to achievement of the Directive's objectives, for the Member States which joined the Union after 2004 the emphasis is laid on their transposition of the Directive.

It should be underlined that the Community Strategy 2007-2012 on health and safety at work[6] recognises the particular situation of temporary and fixed-term workers, who are seen as being overexposed to the risk of accidents at work. In its resolution on the Community Strategy, the European Parliament[7] urged the Commission to pay greater attention to the issue of health and safety of temporary and fixed-term workers.

This staff working paper focuses on the national transposing measures in sections 2 to 7. Section 2 describes the national transposing measures adopted by Member States to implement the Directive. Section 3 analyses whether these transposing measures comply with the scope and object of the Directive. Section 4 deals with the measures concerning information and training of workers. Section 5 considers Member States' use of the possibility to prohibit such workers from performing dangerous work and whether measures guaranteeing medical surveillance if they do such work are provided by national law. The role of protection and prevention services is scrutinised in section 6, and section 7 deals with specific measures regarding temporary employment relationships. Finally, section 8 assesses the practical effects of the Directive by analysing the risks to which workers are still exposed, the practical effects of the different provisions of the Directive, and the potential administrative burdens that the Directive may cause.

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4 Study to analyse and assess the practical implementation of national legislation of safety and health at work, Council Directive 91/383/EEC of 25 June 1991, Labour associados consultores, 2007.

5 Implementation report: Directive 91/383/EEC, Human European Consultancy, Middlesex University, July 2007.

6 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Improving quality and productivity at work: Community Strategy 2007-2012 on health and safety at work, COM(2007)62 final, 21.2.2007.

7 European Parliament resolution of 15 January 2008 on the Community strategy 2007–2012 on health and safety at work (2007/2146(INI)).

2. NATIONAL TRANSPOSING MEASURES

The Directive has been transposed in all Member States. They had to adopt the legislation to comply with the Directive by 31 December 1992. The Member States which joined the European Community afterwards implemented the Directive at the time of their accession. The Commission has information about the main national measures which were adopted and notified to it, but sometimes lacks information on specific implementation measures for each Member State due to failure to notify them to the Commission.

The majority of Member States have implemented the Directive by way of general legislation, regulations and administrative provisions. The Directive does not provide for the possibility to adopt transposing measures through collective agreement or at least does not provide for the consultation of social partners. For this reason few collective agreements implement the Directive, and Member States have not always taken into account the social partners' views on how to transpose the Directive.

In **Austria**, the general Health and Safety Act (ASchG) of 1 January 1995 (Federal Law Gazette 450/1994) transposed the Directive. The Act has since been amended several times. Section 9 of this Act deals explicitly with temporary employment agencies, which are covered as well by § 6 of the Temporary Employment Act (Arbeitskräfteüberlassungsgesetz – AÜG). Two further sections mention temporary employment agencies only to supplement the general provisions (Sections 76 and 81 dealing with preventive services). In line with the principle of equal treatment, the further provisions of the Health and Safety Act apply to both temporary agency workers and workers with fixed-term contracts.

The Directive was transposed in **Belgium** by two decrees:

– Royal Decree of 19 February 1997 establishing measures with regard to safety and health at work of workers with a temporary employment relationship.

– Royal Decree of 4 December 1997 establishing a central prevention service for the agency work sector.

– Additionally there are the two framework laws of 24 July 1987 and of 4 August 1996 as amended by the Programme Law of 25 February 2003 and the Royal Decree of 28 May 2003.

In **Bulgaria** the Directive was transposed by amending the Law on health and safety at work (ZZBUT) by introducing express additional requirements for workers employed on a fixed-term or temporary basis (State Gazette No 76 of 2005). Additionally, Ordinance No 5 of the Minister for Labour and Social Policy of 20 April 2006 on ensuring health and safety at work for workers on fixed-term or temporary contracts was promulgated to implement the Directive.

In **Cyprus** the Directive was transposed by Regulations issued under Article 38 of the Safety and Health at Work Law 1996-2003, namely the Regulations on Safety and Health at Work for Employees with a fixed-term Employment Relationship or with a temporary Employment Relationship of 2002 (P.I. 184/2002). In addition, the national authorities adopted the Management of Safety and Health at Work Regulations of 2002 (P.I. No 173/2002 of 05.04.2002).

The national provisions transposing the Directive in the **Czech Republic** are Sections 132 to 137 on Occupational Health and Safety of Act No 65/1965 (Coll. the Labour Code). The Labour Code and the Act No 262/2006 Coll. entered into force on 1 January 2007. The Labour Code is supplemented by Act No 309/2006 Coll. on Occupational Health and Safety, and Act No 362/2007. Occupational health and safety are thus regulated by Sections 101 to 108 of the Labour Code and Sections 1 to 13 of the Occupational Health and Safety Act.

In **Denmark**, the Directive was transposed by an amendment to the Danish Working Environment legislation. More specifically, it was transposed by amendments to the executive order on the performance of work (BEK 492 of 20 June 2002), which came into force on 1 January 1993. The general legislation on health and safety is constituted by the executive order on the Performance of work No 559 of 17 June 2004 and the executive order on Undertakings' work with safety and health measures No 575 of 21 June 2001 (including later amendments). The current Working Environment Act (WEA) was brought into force by the executive order No 268 of 18 March 2005.

In **Estonia** the Directive was transposed by the Occupational Health and Safety Act[8] (the TTOS) which entered into force on 26 July 1999. Following the adoption of the TTOS a number of regulations on occupational health and safety were adopted. The rules governing temporary workers are set out in the Employment contract Act (TLS 2008), which entered into force on 1 July 2009.

In **Finland** the basic text on occupational health and safety which transposes the Directive is the Occupational Safety and Health Act (738/2002). This legislation was amended in 2008 by Act 709/2008, which entered into force at the beginning of 2009. To supplement the legislation transposing the Directive, a Decision of the Council of State (782/1997) was adopted to ensure an equal level of occupational safety and health protection for hired workers and other workers. That decision was recently repealed and its provisions are now part of the law under the Occupational Safety and Health Act.

In **France** the Directive was transposed through various legislative instruments and collective agreements. Thus, a number of provisions which stem from the Directive can be found in the main text of French Labour Law, the Labour Code. This legislation is supplemented by a number of collective rules, primarily contained in the « Accord national interprofessionnel » of 24 March 1990, on fixed-term employment contracts and temporary work agencies. There is also a « Convention collective Travail temporaire » JO 3212. In addition, there are a number of agreements on specific issues which also apply to these forms of employment:

– Agreement of 10 April 1996 concerning personal protective equipment

– Framework agreement of 28 February 1984 on occupational medical services

– Agreement of 26 September 2002 on Health and Safety at work

– Supplementing agreement of 26 September 2002 on Health and Safety at work

National rules transposing the Directive in **Germany** were adopted under the Law on Occupational Safety and Health of 7 August 1996 (Arbeitsschutzgesetz - ArbSchG). The Temporary Employment Act (Arbeitnehmerüberlassungsgesetz - AÜG) is the basic law regulating temporary agency work, whereas the Law on Part-Time Work and Fixed-Term

[8] Töötervishoiu ja tööohutuse seadus RT I 1999, 60, 616; 2000, 55, 362; 2001, 17, 78; 2002, 47, 297; 63, 387; 2003, 20, 120; 2004, 54, 389; 86, 584; 89, 612; 2005, 39, 308.

Employment (Gesetz über Teilzeitarbeit und befristete Arbeitsverträge) is for fixed-term employment relationships. For temporary agency workers as well as for workers with fixed-term contracts, the general regulations on social protection and occupational safety and health apply.

In **Greece**, the only piece of legislation notified to the Commission as transposing the Directive was Presidential Decree No 17 of 18 January 1996 on measures to improve the health and safety of workers at work, as amended by Presidential Decree 159/1999 on 'measures for the improvement of workers' health and safety in the course of their work in compliance with Directives 89/391/EEC and 91/383/EEC'.

With regard to general terms and conditions of employment for workers with fixed-term contracts, the relevant texts are:

– Presidential Decree 164/2004 'Regulations regarding workers with fixed-term employment contracts in the public sector';

– Presidential Decree 81/2003 'Regulations regarding workers with fixed-term employment contracts (77/A)' amended by PD 180/2004, which covers the private sector.

For workers hired by temporary work agencies the basic texts are Law 2956/2001 'Reorganisation of OAED (Employment Observatory) and other provisions' which introduced the statute of Temporary Employment Agencies; Ministerial Decision with Protocol number 30342, issued on 6/3/2002, 'Regulation of terms, conditions and procedure on the implementation of Law 2956/2001, regarding Temporary Employment Agencies', which regulates the role of temporary employment agencies.

In **Hungary** the Directive has been transposed by the 2004 Amendment of the Labour Protection Act (Act XCIII. of 1993), Sections 9, 40, 42, 54(7), 55, 57, 61, 70, and the 2001 Amendment of the Labour Code (Act XXII. of 1992), Sections 22, 71, 73, 75, 79, 193/B-P. The provisions of Decree No 33/1998 (VI. 24) of the Minister of Welfare on the medical examination and reporting on job, professional and personal hygienic suitability (Sections 6 and 15) also transpose the Directive.

In **Ireland**, the Directive was transposed by the Safety, Heath and Welfare at Work Regulations of 1993 as amended in June 2005. These provisions are now included in the Safety, Health and Welfare Act 2005 ('2005 Act'), which aims at securing and improving the safety, health and welfare of all workers.

In **Italy**, the Directive was transposed both by Act No 196 of 1997 and by Legislative Decree 626/94, as modified by Legislative Decree No 242 of 19 March 1996. The Legislative Decree 626/94 was repealed by Legislative Decree No 81 of 9 April 2008, which entered into force on 15 May 2008. Some specific regulations also implement the Directive , such as the Decree of 31 May 1999 and national collective agreements for temporary workers, agreed in 1998 and 2002. In the case of fixed-term contract workers, their working relationship is regulated by D.Lgs. 368/01.

In **Latvia** the provisions of the Directive have been transposed by the Labour Protection Law of 20 June 2001, amended in April 2004 and September 2006. A number of other national rules transpose the Directive, such as: Articles 28, 39, 44(1), 44(2), 44(6), 100(2) and 113 of the Labour Law; Regulation by the Cabinet of Ministers 353 on Work in Activity areas where

an Employment Contract is normally not entered into for an Unspecified duration, as amended in February 2005 and May 2007; Ministerial Regulation 272 on Seasonal Work, as amended in January 2005 and May 2007.

In **Lithuania**, Articles 89, 260, 263, 265, 266 and 270 of the Labour Code, transposed parts the Directive. There are also Articles 3, 11, 18, 27 and 28 of the Law on Safety and Health at Work No IX-1672 of 1 July 2003.

In **Luxembourg**, the Directive was transposed by the Act of 24 May 1989 on the contract of employment, as amended by the Act of 15 May 1995, the Act of 17 June 1994 on the safety and health of workers at work, the Act of 19 May 1994 regulating temporary employment and the hiring out of labour and the Act of 13 January 2002. These laws have now been included in the Labour Code in Part I Sections I and II on work contract and temporary work, and in Part III on safety and health.

In **Malta**, the Directive was transposed by Articles 3, 4, 6, 9, 11, 12, 13, 14, 16 and 18 of the Major Accident Hazard Regulations (LN 36/03). The Occupational Health and Safety Authority Act of 2000 is also relevant.

In the **Netherlands** the transposition of the Directive was completed through various legislative instruments:

– The Civil Code, which sets out the basic rules for labour contracts and, within that context, also the rules on employers' responsibility for health and safety at work.

– Specific legislation regarding occupational safety and health: the Working Conditions Act and related ministerial Decrees (Arbeidsomstandighedenwet or 'Arbowet'), revised in 1994 and amended again in 1998 and in 2007.

– Specific new legislation on the employment of temporary workers by intermediate agencies (such as temporary work agencies): the Law on Allocation of Workers by Intermediates (Wet Allocatie van Arbeidskrachten Door Intermediairs or 'WAADI'), introduced in 1999.

– Specific legislation regarding labour contracts for temporary workers: the Law on Flexibility and Security (Wet Flexibiliteit en Zekerheid or 'Flexwet'), introduced in 1999; Specific legislation regarding workers' participation: the Works Councils Act (Wet op de Ondernemingsraden or 'WOR'); Collective bargaining has also played an important role in this implementation process, especially as the temporary work sector itself concluded a collective labour agreement for agency workers during the 1990s, whereby the social partners agreed upon the need for an adequate health and safety policy and extra training provisions for temporary agency workers.

In **Poland** the Directive was transposed by several provisions of the Labour Code and the Act of 9 July 2003 on the Employment of Temporary Workers (Journal of Laws (*Dziennik Ustaw*) No 166, item 1608; of 2004, No 96, item 959; of 2007, No 89, item 589; and of 2009, No 6, item 33, and No 221, item 1737).

In **Portugal**, transposition of the Directive was handled by different acts and by category of workers. Concerning fixed-term workers, the Directive was initially transposed by the Labour Code registered as Law 99/2003, which was enacted in 2003. Now, the matter in question is governed by the 2009 Labour Code, adopted by Law No 7/2009 of 12 February 2009, and by

Law No 102/2009 of 10 September 2009 (legal rules governing the promotion of health and safety in the workplace). Concerning temporary workers, the Portuguese legislature has opted to split the relevant legal provisions across two different instruments: the 2009 Labour Code (Articles 172-192), and Decree-Law No 260/2009 of 25 September 2009. Temporary workers hired by a temporary work agency to perform their work at a user undertaking are regulated under specific legislation.

In **Romania,** the Directive was transposed by the Government Decision No 557/2007 on supplementing the measures to improve the health and safety at work of employees engaged on fixed-duration individual contracts and of temporary employees engaged at temporary employment businesses. Protection of the safety and health of temporary workers and fixed-term workers is also governed by the Law on health and safety at work No 319/2006 and by the associated regulatory actions.

In **Slovakia**, the Directive was transposed by the Act No 124/2006 Coll. on Occupational Safety and Health Protection, which specifies the obligations of employers and the rights and obligations of employees, as well as by the Labour Code of 2001 (Act No 311/2001 Coll.) and by the Act No 355/2007 Coll. on the protection, support and development of public health and on amendments of certain acts, as amended by Act No 140/2008 Coll. In addition, there are seven governmental regulations which govern and implement provisions of the Act on Occupational Safety and Health Protection. Article 6 of Act No 125/2006 Coll. on Labour Inspection implements the relevant parts of the Directive.

In **Slovenia**, the Directive was transposed by Articles 52, 55, 57, 60, 61 and 62 of the Employment Relationships Act – ZDR (and other acts), Article 10 of the Workers' Participation in Management Act, and Articles 18, 19, 20, 23 and 24 of the Health and Safety at Work Act (ZVZD, Official Gazette of the Republic of Slovenia, No 56/99 and 64/01).

In **Spain**, the Directive was transposed by Article 28 of Act No 31/1995 on the Prevention of Occupational Hazards, which is devoted to the specific situation of temporary workers, applying equally to 'temporary workers, fixed-term contracts and temporary work agencies' (Articles 12(3) and 16 of Act No 14/1994 on the Regulation of Temporary Work Agencies also deal with these issues), and by Royal Decree 216/1999. The State Collective Agreement on Temporary Employment Agencies of 8 February 2008 has to be taken into account as well.

In **Sweden**, the Directive was implemented by the Work Environment Act (1977/1160) by adding an additional section. The amendment to the Act came into force on 1 October 1994. Furthermore, some of the Directive's provisions were implemented in other Swedish legislation, such as the Systematic Work Environment Act (AFS 2001/1) and the Medical Controls Act (AFS 2005/06). A number of collective agreements apply as well (FAS 05 Agreement, The temporary work agreement).

As for the **United Kingdom** (in this text, this term covers Great Britain in the sense of England, Wales, Scotland, Northern Ireland and Gibraltar), the Directive was transposed in Great Britain (GB) by successive versions of the Management of Health and Safety at Work Regulations 1999 (MHSWR), in Northern Ireland by the Management of Health and Safety at Work Regulations (Northern Ireland) 2000 and in Gibraltar by the Management of Health and Safety at Work Regulations 1996.

More specifically, in Great Britain, the basic text in this field is the Health and Safety at Work Act 1974, which applies to all workers, including those employed under fixed-term contracts

and through temporary work agencies. The requirement of a Regulatory Impact Assessment for the Health and Safety (Miscellaneous Amendments) Regulations 2002 can be particularly relevant to temporary workers. There are also important provisions for information and training for temporary workers arising from the Control of Substances Hazardous to Health 2002 and the Control of Asbestos at Work 2002 Regulations. The provision of personal protective equipment for temporary workers from their first day at work is also important, under the Personal Protective Equipment Regulations 1992. There are provisions for the fire safety of temporary workers, under fire safety law, consolidated in the Regulatory Reform Order 2005 (Fire Safety). Temporary workers are also included as display screen equipment users under the Health and Safety (Display Screen Equipment) Regulations 1992. Finally, there are other regulations, such as the Conduct of Employment Agencies and Employment Businesses Regulations 2003 and the Gangmasters (Licensing) Act 2004 and subsequent regulations, which currently fall outside the sphere of health and safety at work, but are nonetheless relevant to the safety and health of temporary workers.

3. SCOPE AND OBJECT OF THE DIRECTIVE

Article 1: Scope

This Directive shall apply to:

'1. employment relationships governed by a fixed-duration contract of employment concluded directly between the employer and the worker, where the end of the contract is established by objective conditions such as: reaching a specific date, completing a specific task or the occurrence of a specific event;

2. temporary employment relationships between a temporary employment business which is the employer and the worker, where the latter is assigned to work for and under the control of an undertaking and/or establishment making use of his services.'

Article 2: Object

'1. The purpose of this Directive is to ensure that workers with an employment relationship as referred to in Article 1 are afforded, as regards safety and health at work, the same level of protection as that of other workers in the user undertaking and/or establishment.

2. The existence of an employment relationship as referred to in Article 1 shall not justify different treatment with respect to working conditions inasmuch as the protection of safety and health at work are involved, especially as regards access to personal protective equipment.

3. Directive 89/391/EEC and the individual Directives within the meaning of Article 16 (1) thereof shall apply in full to workers with an employment relationship as referred to in Article 1, without prejudice to more binding and/or more specific provisions set out in this Directive.'

The Directive deals with protection of the safety and health of workers within two particular forms of employment: fixed-term employment contract and temporary employment relationship. In the first category, the contract is concluded directly between the employer and the worker, and the end of the contract is established by objective criteria. In the second category, the contract is concluded between a temporary employment agency and the worker, but the latter is assigned to work in a user undertaking.

These two categories of working relations differ from a legal point of view, but it was considered at the time of adoption of the Directive that they had similarities regarding the greater exposure of the workers concerned[9] to health and safety risks in comparison to the situation of workers with an open-ended or permanent contract. For this reason, a set of rules was adopted to ensure that these workers are afforded, as regards safety and health at work, the same level of protection as that of other workers in the user undertaking and/or establishment.

Most Member States have correctly transposed Article 1 as their implementing measures cover the two categories of workers described by the Directive. They seem to have made more changes to national legislation in connection with workers employed by temporary employment agencies. This may be due to the legal complexity of the three-way relationship which is involved. However, it should be mentioned that few Member States do not expressly recognise temporary employment relationships in their legal order.

As for fixed-term workers, the majority of Member States implemented the Directive by means of their general rules on health and safety, explicitly covering these workers as well, rather than enacting legislation specific to these workers. In most Member States it is common to find general statements declaring a right to equal treatment which applies to all aspects of the employment relationship, although specific equal treatment rights in the field of safety and health can also be found. The problem is that a right to equal treatment is not automatically equivalent to a right to be afforded the same level of protection in circumstances where temporary and fixed-term workers are more exposed to risks.

In **Austria**, pursuant to Article 1(1), the ASchG applies to workers at work. Article 2(1) of the ASchG defines workers as 'all persons performing an activity in the framework of an employment or training relationship'. The ASchG also applies in full to workers on a fixed-term contract of employment. Workers assigned to work for a user undertaking and under its supervision are also workers within the meaning of the ASchG, as stated in Article 9(1) in conjunction with Article 2(1) of the Act.

Article 2 of the Directive does not seem to have been expressly transposed. However, employers may not treat workers with a fixed-duration employment relationship differently as regards health and safety at work, pursuant to the general principle of equal opportunities enshrined in social legislation. The ASchG also applies to assigned workers with a fixed-term employment relationship, i.e. temporary workers.

Belgian law provides for fixed-term contracts of employment terminating on a specific date and contracts for the performance of 'a clearly defined task' (Act of 3 July 1978) as defined in Article 1 of the Directive. The legal provisions and regulations regarding health and safety apply to all employees irrespective of the duration of their employment relationship. Moreover, the Royal Decree of 19 February 1997 lays down measures concerning the occupational health of temporary workers, and recognises and specifically addresses the occupational hazards associated with this particular form of employment.

As for the transposition of Article 2 of the Directive, Belgian law does not appear to make a distinction between workers with a fixed-term or temporary employment relationship and other employees, and so they are entitled to equal treatment in respect of hygiene, health and

[9] See also explanation in Section 8 of this staff working paper.

medical surveillance. The conditions governing access to personal protective equipment are the same for all categories of workers.

In **Bulgaria**, Ordinance No 5 of the Minister for Labour and Social Policy of 20 April 2006 on ensuring health and safety at work for workers on fixed-term or temporary contracts provides a legal definition of 'temporary employment business'. The status of fixed-term workers is also recognised as provided in Article 1 of the Directive.

According to Article 68(2) of the Labour Code and Article 14(1) of the Law on health and safety at work, employees with fixed-term employment contracts must not be treated less favourably than those with indefinite contracts. Article 14 of the Law on health and safety at work (ZZBUT) requires employers to provide safe and healthy working conditions for all employees, regardless of whether they are employed under an indefinite, fixed-term or temporary employment contract, and indeed for any other persons who happen to find themselves in or around work premises, sites or facilities.

These provisions seem to be an adequate transposition of Article 2(1) and 2(2) of the Directive.

As for **Cyprus**, the Law on Safety and Health at Work 1996-2003 defines an 'employee' as any person working with an employment contract or a trainee or an apprentice and includes persons who carry out work assigned to them as inmates of an institution. Article 2 of the relevant Regulations provides for a definition of fixed-term employment relationships and temporary employment relationships in workplaces, which is similar to that contained in Article 1 of the Directive.

Regulations P.I 184/2002, particularly Regulation 4 part (1) and part (2), provide for a principle of equal treatment and for the same level of protection for atypical workers.

In the **Czech Republic**, national law provides that a person who has an employment relationship is considered to be a worker or an employee. The employment relationship is defined as an employment contract or either of the two types of agreements on work performed outside an employment contract. The agreements on work performed outside an employment contract are: an agreement for the performance of a work assignment and an agreement on working activity. The Labour Code covers all employees, except some public officials with specific tasks.

According to national law the normal employment contract is of indefinite duration. However, a fixed-term contract can be concluded. Temporary agency employment is regulated by Sections 38(a) and 38(b) and Sections 308 and 309(b) of the Labour Code. These definitions seem to comply with Article 1 of the Directive.

It is not expressly stipulated that fixed-term workers and temporary workers should receive the same level of safety and health protection as other workers as required by Article 2 of the Directive. However, according to the available information, all employees enjoy in practice the same treatment with respect to working conditions inasmuch as the protection of safety and health at work is involved, regardless of the type of contract that they have concluded. Section 104 of the Labour Code provides for the provision of personal protective equipment to all employees.

As for **Denmark**, national legislation seems to comply with the Directive's provisions as it prohibits all forms of discrimination in the field of health and safety at work based on the nature of the employment contract (Working Environment Act 1977, amended in June 1998, and Order on the Performance of Work 867/1994 concerning the mutual obligations of the user undertaking and the temporary employment agency in respect of assigned workers).

In **Estonia**, the Employment Contracts Act provides for definitions as set out in Article 1 of the Directive. According to Article 1(1) of the Occupational Health and Safety Act, the scope of the Act covers occupational health and safety requirements for work performed by persons working on the basis of employment contracts and as public servants. The general principle of non-discrimination in employment relationships as regards fixed-term workers is laid down in Article 13(1) and 13(2) of the ECA. These provisions seem to cover all the different situations in employment relationships including requirements on health and safety arising from the TTOS.

Under Article 13(1) (11) of the TTOS an employer must provide workers, at his own expense, with personal protective equipment and special work clothes. The rights and obligations of employers and employees in relation to personal protective equipment are also regulated by Government Regulation No 12. It does not refer to fixed-term employment contract workers or workers with temporary employment relationships.

The **Finnish** legislation on health and safety protection at work seems to cover all categories of workers, irrespective of the nature or the duration of their employment relationship. However, no detailed information is available on the definition of employment relationships as referred to in Article 1 of the Directive. Chapter 2 Section 2 of the Employment Contracts Act (55/2001) prohibits discrimination on the grounds of the nature and duration of the contract and provides for equal treatment regarding health and safety provisions.

In **France**, the existence of both fixed-term contracts and temporary employment contracts is recognised by law and their definition complies with the Directive's provisions. These two forms of employment relationships trigger the application of particular health and safety measures at work, both under laws and regulations and under provisions developed on the basis of collective agreements. Both employees recruited by temporary employment agencies and assigned to a user undertaking and employees on a fixed-term employment contract are considered as employees exposed to additional risks, and specific prevention measures apply to them.

Regarding safety equipment, the national agreement of 24 March 1990 stipulates that the employer must take all necessary measures to ensure that employees with a fixed-term employment relationship are provided with the same protective equipment as employees with a permanent employment relationship doing the same jobs, and that they use them effectively (Article 16(3) of the agreement). As regards temporary workers, Article 16(2), sentence 4 of the agreement states that the head of the user undertaking must ensure that these workers actually use the collective and individual protective equipment provided. These provisions seem to transpose Article 2 of the Directive.

In **Germany** the ArbSchG, as defined in Article 1, covers all workers in all fields of activity, including workers with a temporary employment relationship or a fixed-term employment relationship as referred to in Article 1 of the Directive. Moreover, the particular situation of these workers is taken into account in certain provisions of the AÜG. Fixed-term workers and temporary workers benefit from the same conditions as all other workers. The ArbSchG does

not seem to contain an express ban on discrimination as provided under Article 2(2). However, the general principle of equal opportunities enshrined in labour law applies to all matters in this field, including health and safety duties. These national rules seem to be in conformity with the Directive.

In **Greece**, Article 2(1) of Presidential Decree 17/1996 defines a worker, for the purposes of transposing the Directive, as 'any person employed by an employer under any employment relationship, including trainees and apprentices, except for domestic staff'. The employment relationships as defined in Article 1 of the Directive are covered by different national rules and seem to comply with the Directive's requirements. All workers including those with fixed-term employment contracts and those hired through temporary employment agencies are fully covered by the legislation in force on the safety and health of workers. Discrimination based on the type of contract is forbidden as far as health and safety issues are concerned.

In **Hungary**, the Labour Code contains definitions of employment relationships covering the categories provided for in Article 1 of the Directive. Fixed-term employment and temporary employment are among the employment relationships provided by law and their definitions under Hungarian law are in line with the Directive's provisions.

Act XCIII of 1993 on Labour Safety (Mvt.) does not differentiate between the different forms of employment for its application. According to its Section 9 it covers 'all forms of organised employment', irrespective of their organisational or ownership form. Section 87 defines organised employment as work performed in any legal form, such as an employment relationship, civil service or public employment relationship. This seems to include fixed-term and temporary workers. The implementing regulations of the Mvt. provide for equal treatment with respect to working conditions without any distinction based on the form of work (contract) or duration of work.

According to Section 42(b) of the Mvt. the employer must provide the employees with appropriate personal protective equipment against dangers. It is not specified whether fixed-term and temporary workers are equally covered by this obligation of the employer. The special rules on personal protective equipment were first found in Decree of the Minister of Welfare No 2 of 2002 (2/2002. (II. 7.) SZCSM rendelet), which has since been replaced by Decree 18/2008 of 3 December of the Minister for Social Affairs and Labour on the requirements and conformity certification of personal protective equipment.

According to the available information regarding the situation in **Ireland**, it seems that Section 2(1) of the 2005 Act correctly transposed the definitions given in Article 1 of the Directive. Section 8(3) and (4) expressly covers all the obligations contained in Article 2 of the Directive as regards workers with a temporary or fixed-term employment relationship.

In **Italy**, the scope of Legislative Decree No 81/2008 covers all temporary workers and workers with fixed-term employment contracts as referred to in Article 1 of the Directive. It appears that the Court of Cassation had enshrined the principle that health and safety rules should apply to all workers, irrespective of the nature of their employment relationship. This jurisprudence is reflected in Article 2 (1) (a) of Legislative Decree 81/2008. Other legislation, Article 6 of Legislative Decree No 368/2001 as subsequently amended and supplemented in the case of fixed-term contracts and Article 23 of Legislative Decree No 276/2003 as subsequently amended and supplemented in the case of employment agency contracts, specifically prohibits discrimination through the application of working conditions which are

different from and less favourable than those applying to workers with contracts valid for an indefinite period.

In **Latvia**, Article 1(13) of the Labour Protection Law (LL) defines an employee as any natural person who, on the basis of an employment contract for agreed remuneration, performs specific work under the guidance of an employer. The general principle is that employment contracts are concluded for an unspecified duration except in the cases set out in Section 44 of the LL, which provides for fixed-term employment relationships.

It seems from the available information that there are no provisions concerning temporary employment agencies and user undertakings and/or establishments. Should a person be employed by a temporary employment agency, his or her employment contract is treated as any other employment contract. Work at a user undertaking would still normally be regarded as work for the temporary employment agency only, the latter simply providing services to the former. This does not seem to be in line with the provisions of the Directive, and the specific situation of temporary workers does not seem to be taken into consideration by national rules.

As for the implementation of Article 2 of the Directive, Article 7 of the LL confers as a general principle an equal right 'to work, to fair, safe and healthy working conditions.' Furthermore, Article 29 of the LL provides for a general prohibition of discrimination based on gender, (…) or other circumstances of an employee. Finally, Article 44(6) of the LL contains an equality clause specifically regarding fixed-term workers providing that the same provisions apply to employees with an employment contract of indefinite duration, and employees with a fixed-term employment relationship.

In **Lithuania** there is a single definition of an employee, who is a natural person possessing legal capacity in labour relations employed under an employment contract for remuneration (Article 15 of the Labour Code). Temporary workers as referred to in Article 1 of the Directive do not seem to be recognised under Lithuanian law. A draft law on agency work is under discussion with the social partners within a working group set up in 2007.

Article 3 of the Law on Safety and Health at Work stipulates that safe and healthy working conditions must be provided for all employees, regardless of the type of work contract concerned. Article 260 of the Labour Code does confer a right for every employee, irrespective of the type of contract, to work in safety and provides this level of protection equally to all workers.

Article 263(3) of the Labour Code sets out a general obligation for the employer to provide personal protective equipment for employees. It seems that workers as defined in Article 1 of the Directive are covered by this provision as well.

In **Luxembourg's** legislation, the definitions of the employment relationships as referred to in Article 1 of the Directive are in line with the Directive's requirements. The existence of a fixed-term employment contract or a temporary employment contract triggers the application of special measures on safety and health at work. Thus, these workers are considered as being exposed to additional risks which are subject to specific prevention measures.

Article L311-2 of the Labour Code on safety and health issues covers every type of contract labour situation, including the one covered by the Directive.

In **Malta,** Regulation 3(1) sets out definitions of 'fixed-term contract of employment' and of 'temporary worker' which are in line with the definitions of employment relationships in Article 1 of the Directive.

Under Regulation 18, an employer must ensure that such atypical workers are afforded the same level of occupational health and safety protection as that of other workers. The existence of an atypical employment relationship, including temporary employment, does not justify different treatment with respect to working conditions insofar as the protection of safety and health at work are involved, especially as regards access to personal protective equipment. This provision appears to be in conformity with the Directive.

In the **Netherlands**, the 1998 Dutch Working Conditions Act *(Arbeidsomstandighedenwet)* embodies the above premise in two ways. Firstly, the scope of the Act is broad. Workers supplied by employment agencies and workers on fixed-term employment contracts simply fall under the definition of 'employee', and a business making use of agency workers is simply regarded, for the purpose of applying the Act, as their 'employer'. Secondly, the Act does not make any specific exceptions for either agency workers or workers on fixed-term contracts which would place them at a disadvantage in comparison with other workers. It covers both the employment relationships defined in Article 1(1) of the Directive. Although the Working Conditions Act does not contain any express provision on discrimination corresponding to Article 2(2) of the Directive, there appears to be compliance with the Directive: Specific rules guarantee equal treatment to all workers. Under Dutch law, the employer or user undertaking is subject to the same obligations in respect of workers with a fixed-term or temporary employment relationship as in the case of any other employees. The same applies to temporary workers because, by virtue of Article 1(1) (a b), they are considered to be employees of the user undertaking. These national rules comply with the Directive.

In **Poland**, Article 2 of the Labour Code defines an employee as a person employed under an employment contract. Article 2 of the Act on temporary workers' employment states that a temporary worker is a person employed by a temporary work agency solely to perform temporary work for and under the supervision of the user employer. The user employer is defined as an operator determining tasks for temporary workers and supervising those temporary workers. These definitions appear to be in line with the definition of employment relationships which are covered by the Directive.

As for the transposition of Article 2 of the Directive, Article 14 of the Act on Temporary Workers' Employment states that all employers are obliged to provide safe and healthy conditions of work irrespective of whether the contract is an employment contract or a civil contract. Article 11(3) of the Labour Code states that any form of discrimination in employment, either direct or indirect, based on the type of employment contract (fixed-term or indefinite) is inadmissible.

Portuguese law seems to be in line with the definition of employment relationships set out in Article 1 of the Directive.

The Decree-law No 441/91 (Framework Act on Safety, Hygiene and Health at Work) applies to all workers and all undertakings. Similarly, the 2009 Labour Code and Law No 102/2009 of 10 September 2009 apply to all workers and all undertakings.

Concerning temporary workers, Article 186 of the 2009 Labour Code states that 'temporary workers shall enjoy the same level of protection in relation to health and safety in the workplace as do the other employees of the user undertaking'. In any case, the prohibition on discrimination is enshrined in the framework safety and health at work act and in the rest of Portuguese law.

In **Romania**, the legislation seems to be in line with the definition of employment relationships covered by the Directive. The Government Decision No 577/2007 covers employees engaged on a fixed-term individual contract, and temporary workers assigned by temporary employment agencies.

The Government Decision No 577/2007 obliges the employer, or the user undertaking, to ensure that employees engaged on a fixed-term contract of employment and temporary workers enjoy the same working conditions as regards health and safety at work, particularly regarding access to personal protective equipment. Moreover, the Decision states that the provisions of the Law on health and safety at work No 319/2006 and the associated regulatory actions also apply to these workers.

These provisions appear to constitute adequate transposition of Article 1 and Article 2(1) and 2(2) of the Directive.

In **Slovakia**, Article 3 (b) of the Act on Occupational Safety and Health Protection states that an employee is defined as a natural person who performs dependent work for an employer pursuant to his/her instructions, for a wage or for remuneration. Employees working for definite or indefinite duration are included. Moreover, the scope of the Act extends to temporary agency workers as defined in Article 1 of the Directive.

Article 48, Section 7 of the Labour Code makes special provision for equal treatment for fixed-term employment relationships concerning working conditions with respect to occupational health and safety.

Article 58 of the Labour Code defines temporary employment or temporary assignment. In Section 4, it states that the user undertaking shall provide for 'favourable working conditions and provide for safety and protection of health at work to the same extent as applies to other employees'. Article 6, Section 2 point b) of the Act on Occupational Safety and Health Protection guarantees that employees be provided with personal protective equipment without charge, if it is necessary for ensuring their health and safety in the workplace, and employers are obliged to keep records of such provision.

In **Slovenia**, Articles 4 and 5 of the Employment Relationship Act define an 'employment relationship' and a 'worker'. Article 52 of the Employment Relationship Act defines fixed-term employment contracts and the conditions to be fulfilled in order for such contracts to be legally binding. Temporary agency work is defined in Article 57 of the ERA. These definitions seem to be in line with the Directive's provisions.

Moreover, Article 3 of the Health and Safety at Work Act sets out a broader definition of the terms 'employer' and 'worker'. Under this Act, an 'employee' also means a person employed on any other legal basis, performing work independently or as a self-employed person in agricultural or other activity, or performing work in the workplace as part of a training scheme.

According to the Health and Safety at Work Act 2003 an employer has a duty to ensure the health and safety of his or her employees in every aspect of the work. The Act sets out minimum safety standards for all types of employment relationships, irrespective of the duration of the employment contract.

Article 55 provides for the principle of non-discrimination between fixed-term workers and workers employed for an indefinite duration. They have the same rights and obligations unless stipulated otherwise by the ERA. The right to be provided with personal protective equipment, to have a preventive medical examination, to be trained on safe work methods, and to consultation and information are guaranteed to all employees. These provisions seem to constitute adequate transposition of the provisions of the Directive.

Spanish law seems to transpose adequately Article 1 of the Directive (Ley de Prevención de Riesgos Laborales, LPRL, and Ley del Estatuto de los Trabajadores, LETT, which covers the employment relationships described in Article 1 of the Directive). Article 28(1) of the LPRL appears to have transposed Article 2 of the Directive into domestic law and provides, as a protection against occupational hazards, that temporary agency workers must be treated in the same way as other workers in the undertaking in which they are employed.

The **Swedish** Health and Safety Act covers all types of employment relationships, both permanent and temporary, as required by Article 1 of the Directive. Temporary and assigned workers are also covered by the scope of the national provisions transposing the Directive. Workers with a fixed-term employment relationship and workers assigned by a temporary employment agency are entitled to equal treatment pursuant to the basic health and safety legislation (Working Environment Act 1977/1160).

According to the available information, legislation in the **United Kingdom** seems to be in line with the definition of employment relationships provided by the Directive. Thus, employers must provide their employees with suitable protective equipment (Regulation 4(1) of the Personal Protective Equipment at Work Regulations 1992). In the case of temporary agency workers, the obligation applies only to the temporary employment agency, and not the user undertaking. Temporary and fixed-term workers are covered by national legislation implementing directives on health and safety at work and are afforded the same level of protection as other workers. The Personal Protective Equipment at Work Regulations (NI) 1993 and the Gibraltar Personal Protective Equipment at Work Regulations 1996 should be mentioned as well.

4. INFORMATION AND TRAINING OF WORKERS

4.1. Provision of information to workers

Article 3 of the Directive states that:

'Without prejudice to Article 10 of Directive 89/391/EEC, Member States shall take the necessary steps to ensure that:

1. before a worker with an employment relationship as referred to in Article 1 takes up any activity, he is informed by the undertaking and/or establishment making use of his services of the risks which he faces;
2. such information:
- covers, in particular, any special occupational qualifications or skills or special medical surveillance required, as defined in national legislation, and
- states clearly any increased specific risks, as defined in national legislation, that the job may entail.'

Information is a central element of the special system of safety and health protection established by both the Framework Directive (89/391/EEC) and the Directive (91/383/EEC). The latter seeks to ensure that workers with fixed-term contracts and temporary employment relationships would have the same level of information as other workers and would enjoy at least the same level of protection against work-related hazards as other workers.

Article 3 of the Directive refers to the obligations stemming from Article 10 of the Framework Directive and provides for additional obligations specific to temporary workers and fixed-term workers. Under Article 10 of the Framework Directive the employer must inform workers of the safety and health risks and protective and preventive measures and activities at work and make them aware of all measures concerning first aid, fire-fighting and evacuation of workers, and serious and imminent danger. Appropriate information must be given to all persons working on the undertaking's premises including workers with specific duties for protecting the safety and health of workers or workers' representatives with specific responsibilities in these areas.

Article 3 provides that workers are to be informed, before they take up any activity, of the specific risks which they face. This is a key provision as temporary workers frequently change jobs and workplaces, and are often unaware of potential risks when they are assigned to a new job. The information must cover any special occupational qualification or skills or special medical surveillance required and any specific risks that the job may entail must be made clear.

A large majority of Member States make it obligatory to inform a worker, before he or she takes up any activity, about risks in the workplace. However, several national legislations do not establish this obligation in sufficiently clear terms, namely those of the *Czech Republic, Luxembourg and Slovenia*.

The second aspect to examine is whether the content of the information provided by national measures complies with the provisions of the Directive. It is not possible to infer from the legislations of *Bulgaria, Estonia, Luxembourg, Slovenia and Poland* that the information to be given to the worker covers all the aspects required by the Directive. In the case of *Finland,*

Luxembourg, Netherlands and Portugal, the respective legislations do not stipulate that the user undertaking is obliged to inform directly temporary workers assigned to it about risks in the workplace.

Under **Austrian** law, Section 12 in conjunction with Section 9(2) of the Health and Safety Act states that the temporary employment agency has to provide workers with sufficient information on risks and hazards to safety and health. Moreover, the user undertaking has to inform temporary workers about preventive measures. This information has to be given before any activity starts. Fixed-term workers are subject to the same health and safety regulations regarding information and training as permanent staff, since they must be informed about health and safety hazards and hazard prevention measures in accordance with § 12 subpara. (1) ASchG and trained accordingly under § 14 AschG.

In **Belgium**, Article 5 of the Royal decree of 19 February 1997 imposes a duty to provide information prior to the performance of an assignment in a user undertaking, regarding any specific risks that the organisation or job may entail and any special occupational qualifications or skills needed. If the job evaluation indicates a specific risk to safety and health, the user undertaking must take additional measures with regard to the temporary worker, such as providing information and safety instructions, and information about dangerous entrances. The obligation to inform the temporary worker about special medical surveillance rests with the temporary work agency and not the user undertaking as required by the Directive.

As for **Bulgaria**, Article 4(1) paragraph 1 of Ordinance No 5 of the Minister for Labour and Social Policy of 20 April 2006 on ensuring health and safety at work for workers on fixed-term or temporary contracts, states that these workers are to be duly informed, before they take up their activity, of the risks to their health and safety and the measures to be taken to eliminate, reduce or control such risks. However the wording of these provisions might not fully satisfy the Directive's requirements whereby the information must clearly state any increased specific risk that the job may entail.

In **Cyprus**, according to Regulations P.I 184/2002, fixed-term workers and temporary workers must be informed about the risks they face and about any increased specific risks that the job may entail, before they start their duties. The employer has to compile a written risk assessment of the workplace and distribute it to all workers. The workers have to be informed of the necessary professional qualifications or skills for the job.

In the **Czech Republic** employers are obliged to inform their employees about occupational health and safety, under Section 18(2) (g) of the Labour Code.

Section 103(1) (b) of the Labour Code states that the employer must provide information which covers, in particular, any special occupational qualifications or skills or special medical surveillance required. The duty of an employer to provide information which states clearly any increased specific risks that the job may entail is set out in Section 103(1) (f) of the Labour Code.

As for **Denmark**, Article 18(1) of the Order on the Performance of Work states that the employer's information obligations apply to all types of employment relationships. Article 21 of the Executive order No 559 of 17 June 2004 specifies that temporary workers must be given the necessary information before the commencement of employment, including

information on the required professional level and qualifications, any health certificate requirement, and the special nature of the work including any risk.

In **Estonia**, workers covered by the Directive are protected under general provisions applying to all workers, without having their specific needs taken into account. Article 13 (1) (12) of the TTOS provides for an obligation for an employer to 'familiarise workers with the occupational health and safety requirements, and monitor compliance therewith.' According to Article 13 (1) (13) of the TTOS the information is to be provided before the beginning of the assignment and must include information on the risks related to the work and the measures taken to address them.

In **Finland**, Section 14 of the Occupational Safety and Health Act transposes the Directive's provisions and states that employers must give temporary workers and fixed-term workers, before they start their duties, the necessary information on the hazards and risk factors of the workplace. When doing so they have to take the employees' occupational skills and work experience into consideration.

According to Section 3 of the Occupational Safety and Health Act, any user undertaking is required to inform the temporary employment agency about health and safety conditions. The temporary employment agency is afterwards responsible for giving the information to the worker.

In **France**, the duty to inform workers is contained in the contract of employment. The Labour Code imposes different rules for workers with fixed-tem contracts and for temporary workers. For the former, Article L-122-3-1 provides for a written contract of employment, with a minimum content including the qualifications needed for the position, and a detailed description of the position to be filled. For the latter, Article L 124-3 defines the content of the contract between the user undertaking and the temporary work agency, which should include, among other items, the qualifications required for the position, the specific characteristics of the position, and the protective equipment required for the job. These items are to be included also in the contract of employment between the worker and the temporary work agency. An obligation to inform the worker of the risks which he or she faces is laid down in the framework agreement on occupational health signed on 28 February 1994.

In **Germany**, a general information obligation is established by the Health and Safety Act (ArbSchG). According to Section 11(6) of the AÜG the employer has to inform the temporary worker about safety and health risks in the workplace and about measures and equipment. Information has to be given before starting the work or any related activity.

In **Greece**, Article 7 (6) of the Presidential Decree 17/1996 lays down general provisions about employers' responsibilities for providing information to workers, including temporary workers as required by Article 3 of the Directive. Under this article the employer is obliged to inform workers about any potential hazards stemming from the work they do. In the explanatory circular, the passage referring to Article 7 (9) of the Presidential Decree underlines that where more than one employer exercises their activities in the same establishment, each one is responsible for informing their own workers and their representatives. Article 22(8) of the Statutory Law 2956/2001, regarding the Consolidation of the Working Rights of Temporary Employees, stipulates that the user undertaking must specify, before the temporary worker is made available to it, the following information: the occupational qualifications or skills required, special medical surveillance needed, particular

characteristics of the job position to be covered, and the higher or specific risks related to the job. The temporary employment agency is legally obliged to notify this information to the worker.

The **Hungarian** legislation contains provisions on information for workers which seem to comply with Article 3 of the Directive. Section 54 (7) provides that all necessary information should be given before work starts and ensures that reviews of employee knowledge and observation of safety and health take place. It also provides for discussion with employees, or their safety representatives, about the introduction of new processes and their potential impact on health and safety. According to the Mvt, workers should be informed of any special danger or heightened risk in the workplace that the job may entail.

In **Ireland** the Safety, Health and Welfare at Work Act 2005 states that employers should provide information on occupational safety to workers in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employees concerned, and includes a number of relevant items specified in the text of the Act. This Act also states that when an employee of an agency is assigned to a user undertaking, the latter must take measures to ensure that the employee receives adequate information concerning these matters. Finally, where an employer proposes to use the services of a fixed-term worker or a temporary worker, the employer must, prior to commencement of employment, give the employee information relating to any potential risks to his or her safety, health and welfare at work, health surveillance, any special occupational qualifications or skills required in the workplace, and any increased specific risks which the work may involve.

In **Italy** the duty to inform temporary workers is set out in paragraph (5) of the Legislative Decree No 276/2003. The specific content of obligatory information can be found in Article 36 of Legislative Decree 81/2008, which provides that employers must inform workers as soon as possible if they are exposed to a potentially serious and immediate hazard. Article 36 (2) of Legislative Decree 81/2008 provides that all workers are to be informed by the employer about all the specific risks which the job entails. The information referred to in Article 36 of Legislative Decree 81/2008, as subsequently amended and supplemented, includes 'appropriate information' concerning 'specific risks to which (the worker) is exposed in relation to the work performed (Article 36(2)). This formulation has been interpreted as including a requirement for employers to provide specific information especially where the activity requires particular qualifications and skills. Court rulings have stated that this provision is breached where an employer assigns a worker to activities different from those about which he/she has been informed without first informing the worker of the fact that the activity requires particular skills and/or qualifications and without therefore supplying the worker with the necessary information[10]. Such a breach renders the offender liable to a criminal penalty. Thus, whereas the text may seem not to provide for an obligation to inform the worker of any special occupational qualifications and skills as required by Article 3(2) of the Directive, it is reported that this requirement is satisfied in practice.

Latvia does not seem to have specific rules regarding information for fixed-term workers and temporary workers.

However, Article 14 of the Labour Protection Law provides that employers must ensure that each employee receives instructions and is trained in the field of labour protection, which is

[10] See for example: Court of Cassation, 23 September 2004, No 41707.

directly related to his or her workplace and work performance. Such instructions are to be carried out on commencement of work, and be adapted to the professional preparedness of the employees, taking into account their education, work experience, skills and previous training (Clause 14 of Cabinet Regulation No 323 of 17 June 2003). The instructions must be adapted to any changes in work environment risks, and be repeated periodically.

Article 10(3) of the Labour Protection Law provides that an employer is to ensure that employees have access to information regarding the results of risk assessments on their work environment, occupation or workplace and other aspects regarding health and safety prevention.

Under **Lithuanian** legislation there are no specific rules regarding information for fixed-term workers and temporary workers. These workers are covered by general provisions of the Labour Code whereby the employer must inform and consult employees about all issues related to analysis and planning of occupational safety and health and organisation and monitoring of appropriate measures.

According to Article 27 of the Law on Safety and Health at Work, workers are prohibited from starting their work unless they have received safety instruction. This prohibition applies equally to all workers. The user undertaking also has to ensure that employees assigned under its supervision should not start work until they are informed of the potential risks in the enterprise and have received the necessary training.

Only workers who have specific knowledge and have passed relevant qualification tests in accordance with the procedure laid down in the General Regulations of the Training and Testing of Knowledge in Safety and Health at Work may be permitted to operate potentially dangerous equipment.

In **Luxembourg**, the employer's duties to inform workers of health and safety issues are set out in Part III of the Labour Code concerning Health and Safety. The employer has to inform a fixed-term worker of the risks that the job to be performed entails.

Regarding temporary workers, no information is available about the direct duty of the user undertaking to inform the worker about the risks of the workplace. The Labour Code stipulates that the user undertaking must provide the temporary work agency with the necessary information concerning the qualifications needed for the position to be filled and the special characteristics of the workplace. The agency must make this information known to the employee who is to be assigned to the user undertaking.

In **Malta**, Regulation 18(2) states that an employer must provide temporary and fixed-term workers with information on any special qualifications or skills necessary for working safely and on any health surveillance required. They must also be informed of any specific risks or health and safety issues. All this information must be given before the worker commences his or her duties. According to Regulation 11(2) all workers exposed to serious and imminent danger must be informed of the risks involved and of the steps to be taken in order to protect themselves. .

Regulation 12(1) states that the employer is to provide workers and their representatives with 'comprehensible and relevant' information on the risks to health and safety identified in the

workplace in general, and in respect of any particular job, task or work as well as the preventive and protective measures required.

In the case of the **Netherlands**, the Working Conditions Act stipulates that if the employer has work done by an agency employee, the said employer is to provide the agency supplying the staff with a description of the measures aimed at preventing hazards and risks, and the risks to which the agency employee will be exposed at his/her workstation, well before the agency employee takes up his/her post, so that the agency can pass this description on to the employee. According to Article 11 of the Law on Allocation of Workers by Intermediates, the temporary work agency is obliged to pass that information on to the worker before commencement of the job. Furthermore, Article 8(1) stipulates that the employer must ensure that (all) employees are given appropriate information about their duties and the associated risks, and on the measures in place to prevent or limit those risks. The employer must also ensure that (all) employees are given appropriate information about how the panel of experts (referred to in Articles 13, 14, 14a and 15) is organised in the business or establishment.

In **Poland**, Article 226 of the Labour Code obliges employers to conduct a risk assessment of the work to be performed to spot possible health and safety hazards and apply the necessary measures to address these risks. Consequently, workers have to be informed of possible health and safety hazards identified and about the way to work safely. The provisions of the Labour Code on work safety and hygiene apply to all workers, including fixed-term and temporary workers. According to the provisions of Article 237 (3) of the Labour Code, it is forbidden to allow a worker to work if he or she lacks the required qualifications or necessary skills and sufficient knowledge of the provisions and rules of work safety and hygiene to perform such work.

In **Portugal**, the user undertaking must, before the start of the assignment, inform the temporary employment agency in writing of the results of the assessment of the health and safety risks associated with the position to which the temporary worker will be assigned; and the temporary employment agency must in turn inform the temporary worker of the said risks (Article 186 of the 2009 Labour Code). In addition to this information, the same article provides for temporary workers to also be informed of any instructions to be followed in the event of serious and imminent danger and the first aid, fire fighting and worker evacuation measures to be taken in the event of a serious incident.

In **Romania**, Government Decision No 577/2007 states that the employer, or the user undertaking, must inform workers about health and safety at the workplace before they start their activity. This information covers the professional qualifications, the personal skills, the prophylactic medical services necessary to carry out the activity, and the job-specific major risks.

In **Slovakia**, provisions on information and training are contained both in the Labour Code and in the Act on Occupational Safety and Health Protection. This legislation concerns all workers including the categories described in Article 1 of the Directive. Article 47, Section 2 of the Labour Code provides that the employer is obliged to acquaint newly hired employees also about rights and duties regarding health and safety in the workplace.

According to the Act on Occupational Safety and Health Protection an employer must inform every worker on a regular basis and in an understandable and provable way about legislation and other rules on health and safety in the workplace, rules on safe work and health

protection, rules on safe behaviour in the workplace and safe work procedures, and possible health and safety hazards and their impact on health and protection. The employer must provide this information whenever an employee is being hired, or is transferred to a new workplace or position. This duty also applies when new technology, new work procedures or production processes are introduced.

In **Slovenia**, Article 24 of the Health and Safety at Work Act provides that the employer has a responsibility for informing employees or their representatives about the introduction of new technologies or means of work, as well as any potential or actual dangers of injury or health impairment possibly related to them, for issuing instructions on safe working, and for training employees on safe working practices.

Health and safety training must be adjusted to the characteristics of the workplace and carried out according to a programme which must be, as required by circumstances, renewed and modified with regard to new forms and types of danger.

Spanish legislation provides for an obligation to inform workers, including atypical workers, in order to improve their knowledge and awareness of risks and hazards in the workplace. This obligation is set out in Article 18 of Act No 31/1995 on the Prevention of Occupational Hazards, which deals with 'Information, consultation and participation of workers'. According to Article 28(2) of the same Act, the employer must adopt the necessary measures to ensure that, before the commencement of duties, temporary workers are provided with information on the risks which they are going to be exposed to. The information provided must cover any special occupational qualifications or skills required, any special health surveillance needed, any specific risks of the job, and measures for prevention of and protection from those risks.

As for **Sweden**, under Section 3(3) of the Work Environment Act of 1997 the employer must ensure that the employee acquires knowledge of the conditions in which work is performed and that he or she is informed of the hazards which the work may entail. When providing the information, the employer must take into account the employee's specific aptitudes. The information has to be provided before the work starts, as only workers who have received adequate instructions may gain access to areas with potential risks to safety and health. A user undertaking must take the safety measures which are needed for the work which is assigned to the worker (Section 3(12)). The employer has to make sure that the employee knows what measures should be taken to avoid risks at work (Section 3(3)).

In the **United Kingdom** the obligation to inform workers is laid down in Regulation 15 (1), (2) and (3) of the Management of Health and Safety at Work Regulations 1999. Every employer is required to provide any worker assigned to his undertaking, with comprehensible information on any special qualifications or skills needed to carry out work safely, and on any health surveillance that must be provided to that worker. This information must be provided before they start their activity.

4.2. Workers' training

Article 4 of the Directive provides that:

'Without prejudice to Article 12 of Directive 89/391/EEC, Member States shall take the necessary measures to ensure that, in the cases referred to in Article 3, each worker receives sufficient training appropriate to the particular characteristics of the job, account being taken of his qualifications and experience.'

Training is considered as a basic element of European Community policies on health and safety in the workplace.

The Framework Directive sets out general rules on this issue. According to its Article 12, the employer must ensure that each worker receives adequate safety and health training specific to his or her workstation or job. The training is to be provided to all workers assigned to the undertaking, including workers from outside and workers' representatives with a specific role in protecting the safety and health of workers. The training must not be at the worker's expense and has to take place during working hours.

Article 4 of the Directive applies the same rules to the specific needs of workers with fixed-term contracts and temporary employment relationships. Particularly, as in Article 3, workers have to be trained to protect themselves against the risks involved in their work before they start the activity and the training should be appropriate to the particular characteristics of the job.

Most Member States have adopted specific measures to provide for training for temporary workers. As for workers with a fixed-term contract, Member States rely on national rules applying to all workers under the principle of equal treatment enshrined in their Labour Law.

14 Member States state clearly in their implementing measures that the training has to take place before the activity starts. *Cyprus, Czech Republic, Denmark, Estonia, France, Hungary, Luxembourg, Malta, Poland, Portugal, Romania, Spain, United Kingdom and Sweden.* As for the content, almost all Member States provide for training appropriate to the particular characteristics of the job. However, the implementing measures in the *Netherlands* and in *Lithuania* are not so clear in this regard.

Many Member States do not specify if the training provider has to take into account the qualifications and the experience of the workers. Only a few take this aspect into account in explicit terms: *Austria, Cyprus, Estonia, Germany, Ireland, Luxembourg, Poland, Portugal and Spain*. An interesting point is that in *Italy*, the training has to be adapted to the linguistic capacities of the worker.

The **Austrian** Health and Safety Act (ASchG) provides that for the duration of assignment, the user undertaking is considered to be the employer (Section 9(2)), and has an obligation to provide temporary workers with sufficient training (Section 14). Training must be adapted to the workplace conditions and to the worker's experience.

The **Belgian** Royal decree of 19 February 1997 states that if the job evaluation indicates a specific risk for safety and health, the user undertaking must take the necessary measures to provide sufficient and adequate training to the worker (Article 5(3) (3e)).

In **Bulgaria**, Article 4(1) paragraph 2 of Ordinance No 5 of 20 April 2006 states that temporary workers and fixed-term workers are to be given appropriate training in health and safety at work in connection with the specific nature of the job and the worker's qualifications and experience.

In **Cyprus,** the general provisions on the obligation for the employer to train workers also apply to temporary workers and fixed-term workers. The training concerns the particular characteristics of the job and may be provided before workers start their assigned tasks. According to Regulation 6 of the P.I 184/2002, when providing the training, the employer has to ensure that it takes into consideration the skills and experience of each worker.

In **Czech Republic**, Section 103(1) (f) and (g) of the Labour Code transposed the Directive's provisions on training. Information has to be given to the worker on the risks at work, the result of the risk assessment and the preventive measures taken to tackle the identified risk. In practice, it seems that workers need to pass a test about the training they receive and to sign a certificate confirming that they have received all the information required by law before starting working.

In **Denmark**, Article 18 of the Executive Order No 559 of 17 June 2004 requires the employer to ensure that the employee has received the training and instructions necessary to perform the work free from danger. Article 18 also states that the training and instructions have to be provided particularly on recruitment and in connection with access to employment, transfer of employees or change of job content, introduction of new equipment or change of equipment, and introduction of new technology.

In **Estonia**, Article 13 of the TTOS provides for an obligation on the employer to give adequate training to workers before they start performing their duties. The training must be adapted to the work to be performed and employers may not allow workers without the necessary specialist knowledge and skills to begin work.

For **Finland**, Section 14 of the Occupational Safety and Health Act provides for the training and guidance to be delivered to employees. The user undertaking must, according to Section 3 of the Act, give instructions to employees with regard to the working conditions in the workplace, the occupational safety and health procedures and, when necessary, the arrangements for cooperation and information on occupational safety and health and for occupational health care.

In **France**, Article L231-3-1 of the Labour Code provides that all employers must provide adequate and sufficient training for all newly employed workers, for workers who change their position within the undertaking and for those with fixed-term contracts. Both the 'Accord national interprofessionnel' of 24 March 1990 and the Agreement of 26 September 2002 on Health and Safety at Work also deal with workers' training, with special provisions for temporary workers.

In **Germany**, Section 12(1) of the Health and Safety Act (ArbSchG) transposes Article 12(1) of the Framework Directive. Accordingly, the employer must provide sufficient and appropriate training on occupational safety and health to all workers. In addition, Section 12(2) implements Article 4 of Directive 91/383/EEC. This provision states that the user undertaking must ensure that temporary workers assigned under its supervision receive appropriate training, taking account of their occupational skills, knowledge and experience.

In **Greece**, Presidential Decree 17/1996 does not seem to contain specific provisions for workers with an employment relationship as referred to in Article 1 of the Directive. The general provisions regarding the training of workers set out in the Decree and the explanatory circular are valid for all workers, irrespective of the type of employment relationship.

The **Hungarian** legislation (MvT) contains provisions on training for workers which transpose Article 4 of the Directive. The employer must provide training to the employee both when he/she starts work and during the course of employment, on health and safety provisions and orders. Section 55 of the Mvt states that employers have to provide adequate training for employees so that they obtain theoretical and practical knowledge regarding occupational safety and health, and are able to use it during their assignment. The Mvt also obliges employers to inform workers of the necessary rules, instructions and information upon commencement of work, changing workplace or position, as well as when changes occur in occupational safety and health standards, including the introduction of new technological processes.

In **Ireland**, Section 10 of the Safety, Health and Welfare at Work Act 2005 provides for the instruction, training and supervision of employees. Every employer has to ensure that workers assigned to their undertaking, who are employees of another employer, receive instructions related to any risks to their safety, health and welfare associated with the place of work as necessary or appropriate (paragraph 5). This duty applies as well to every employer who uses the services of a fixed-term worker or a temporary worker, and who must ensure that the workers concerned receive training appropriate to the work which they are required to carry out, having regard to their qualifications and experience (paragraph 6).

Italian regulations on the training of fixed-term workers and temporary workers with regard to occupational health and safety can be found in paragraph 3 of Legislative Decree No 276/2003, as well as in Article 37 (1) of Legislative Decree No 81/2008. There are also some relevant provisions on the successive national collective agreements for temporary workers. This training must be *'sufficient and appropriate'* for every worker. This wording is generally understood to require employers to give workers the training needed, in particular taking into account the training which the worker has *not* already received in connection with previous activities or which is not covered by the worker's occupational qualifications[11]. An infringement here renders the offender liable to a criminal penalty.

In **Latvia**, Article 14 of the Labour Protection Law requires employers to ensure that each employee receives instructions and is trained to work safely. The training must be directly related to his or her workplace and work performance. According to clause 17 and Annex 1 of Regulation No 323, the training of employees has to be appropriate to the particular characteristics of the job.

Under the **Lithuanian** Labour Code, when a worker has insufficient professional skills or knowledge to be able to work in safety and avoid harm to his or her health, persons authorised by the employer must organise the training of the worker at the workstation, or at an enterprise or an educational institution which carries out training in accordance with the General Regulations of the Training and Testing of Knowledge in Safety and Health at Work.

[11] See for example Court of Cassation, Section IV, 18 February 2010, No 6694.

In **Luxembourg**, Part III of the Labour Code concerning Health and Safety of workers stipulates that the employer, before assigning a given job to a worker employed through a fixed-term contract or made available by a temporary work agency, must provide this worker with adequate and sufficient training, appropriate to the particular characteristics of the job, account being taken of his or her qualifications and experience.

Malta provides in its Regulation 18(2) that an employer must give temporary workers (including fixed-term workers) information on any special qualifications or skills necessary for working in safe conditions and on any health surveillance requirement. They must also be informed of any specific risks or health and safety issues. All this information must be given before the worker commences his or her duties.

The employer must also ensure that the worker receives adequate training on health and safety. This takes the form of information and instructions specific to the individual workplace and to the task assigned (Regulation 14).

In the **Netherlands**, according to Article 8(2) of the Working Conditions Act, the employer must ensure that (all) employees are given appropriate training for their particular tasks in respect of the working conditions. To what extent the term 'appropriate' here also covers the specific characteristics of the job, apart from the working conditions in the strict sense, remains to be seen.

In **Poland**, as mentioned above, Article 237(3) paragraph 1 of the Labour Code prevents an employee from performing any job for which he or she is not sufficiently qualified or lacks skills or knowledge on legislation and health and safety rules. Article 237(3) paragraph 2 obliges employers to provide employees with any necessary training on health and safety before they begin work and with periodic training thereafter. The training should be performed during working time and the employer must bear the costs of the training in accordance with Article 237(3) paragraph 2.

As for **Portugal**, Article 187 of the 2009 Labour Code stipulates that temporary employment agencies must allocate at least 1% of their annual turnover to occupational training for temporary workers. Moreover, Article 186 of the same Labour Code states that user undertakings must ensure that temporary workers receive training that is sufficient and appropriate to their position, taking account of their professional qualifications and experience.

As for **Romania**, Government Decision No 577/2007 states that it is up to the employer to ensure that every employee receives adequate and sufficient training on health and safety at work, notably by way of information and work instructions specific to his/her job and position. The training has to take place at the time of recruitment; when the job changes in nature; when there is new working equipment or some changes to existing equipment; when any new technology or working procedure is introduced; prior to the performance of special work.

The training must be adapted to the evolution of risks or to the occurrence of new risks and carried out periodically or at any time it is required.

In **Slovakia**, provisions on training are contained both in the Labour Code and in the Act on Occupational Safety and Health Protection. Article 146, Section 4 of the Labour Code provides that an employer has to provide training about legislation and other health and safety

rules in the workplace to its employees, including temporary and fixed-term workers. According to Article 27 of the Act on Occupational Safety and Health Protection, the training provided must include measures on health and safety in the workplace and the prevention of risks.

In **Slovenia**, health and safety training must be adjusted to the characteristics of the workplace and carried out according to a programme which must be, as required by circumstances, renewed and modified with regard to new forms and types of danger.

The training referred to must take place during working time and may not be at the employee's expense. The purpose of the training programmes is to enable workers to identify healthy and safe working conditions. The Health and Safety at Work Act as well as the Workers' Participation in Management Act sets out equal rights and obligations for all employees, regardless of the duration of the employment contract.

In **Spain** this provision of the Directive on training has been transposed into national legislation both at a general level, for all workers (Article 19 of Act No 31/1995, on the Prevention of Occupational Hazards), and at a specific level, for those workers with fixed-term contracts and temporary employment relationships (Article 28 of Act No 31/1995 on the Prevention of Occupational Hazards and Article 12 of Act No 14/1994 on the Regulation of Temporary Work Agencies).

In **Sweden**, Article 3.3 of the Work Environment Act requires the employer to make sure that the employee has received the necessary training, and has sufficient knowledge, before starting work. No information is available about the content of the necessary training mentioned above.

For the **United Kingdom** the applicable Regulations (Management of Health and Safety at work Regulations) require employers to provide their employees with adequate health and safety training before they start work and to take into account workers' capabilities when entrusting them with tasks.

5. USE OF WORKERS' SERVICES AND MEDICAL SURVEILLANCE OF WORKERS

According to Article 5 of the Directive:

'1. Member States shall have the option of prohibiting workers with an employment relationship as referred to in Article 1 from being used for certain work as defined in national legislation, which would be particularly dangerous to their safety or health, and in particular for certain work which requires special medical surveillance, as defined in national legislation.

2. Where Member States do not avail themselves of the option referred to in paragraph 1, they shall, without prejudice to Article 14 of Directive 89/391/EEC, take the necessary measures to ensure that workers with an employment relationship as referred to in Article 1 who are used for work which requires special medical surveillance, as defined in national legislation, are provided with appropriate special medical surveillance.

3. It shall be open to Member States to provide that the appropriate special medical surveillance referred to in paragraph 2 shall extend beyond the end of the employment relationship of the worker concerned.'

At the time of adoption of the Directive, the legislator considered that temporary workers and fixed-term workers were particularly exposed to health and safety dangers. Moreover, it has been proven that a worker can be in contact with a specific environment or material in one period, and may have health problems connected to that work environment or material only years after that period. For this reason, Article 5 of the Directive gives Member States the option to prohibit particularly dangerous work, and in particular work requiring special medical surveillance. If Member States do not avail themselves of the prohibition option, they have to provide for special medical surveillance for the workers, with the possibility to choose to extend the surveillance beyond the end of the employment relationship of the worker concerned. These provisions must be applied without prejudice to Article 14 of the Framework Directive, which provides for a general obligation in respect of health surveillance of workers appropriate to the specific risks occurring at their workstation.

Four Member States, *Belgium, France, Poland and Spain*, have made use of the prohibition option with variable implementing provisions. The prohibition of dangerous work is more common for temporary workers than for fixed-term workers.

The majority of Member States who do not use the option of prohibiting dangerous work for temporary workers or fixed-term workers make provision for medical surveillance. Only *Romania* did not provide clear information about the rules applicable in this respect. However, the obligation for medical surveillance to be provided in Member States is often general and does not concern the specific risks involved nor does it address the specific needs of fixed-term and temporary agency workers. According to the available information, only *Luxembourg* has made use of the option to extend medical surveillance beyond the end of the employment relationship.

Austria does not avail itself of the options provided for in paragraphs 1 and 3. Paragraph 2 is transposed by Article 9(5) of the ASchG, which prohibits temporary workers from being assigned to activities which require fitness for work examinations or subsequent examinations, unless these examinations have been performed and the worker has not been declared unfit on health grounds. The user undertaking must ensure and be able to provide proof that these examinations have been carried out and that the worker has not been declared unfit. Under § 49 ASchG, workers, including fixed-term workers, performing activities where there is a risk of an occupational illness, and for whom a medical examination is important as a prophylactic measure in view of the specific danger to health associated with the activities, may be used only if such an examination has been completed prior to the start of the activities (suitability examination) and if such examinations are carried out at regular intervals where the activities are continued over a long period (follow-up examinations).

No provision in **Belgian** law appears to prohibit employers from assigning fixed-term workers to dangerous work as provided for in Article 5(1) of the Directive. Temporary workers may not be used for three types of work: demolition and removal of asbestos, gassing activities, and removal of poisonous waste products (Article 11 of the Royal decree of 19 February 1997).

However, there are regulations governing work subject to special medical surveillance which apply to all workers, irrespective of the nature of their employment contract.

No specific provision is made for extending medical surveillance beyond the end of a fixed-term employment relationship. Only the nature of the risk to which the employee has been exposed may require such extension.

In **Bulgaria**, Ordinance No 5 of 20 April 2006 provides that the medical surveillance and care stipulated in national law must be guaranteed to temporary workers and fixed-term workers. No provision appears to prohibit employers from assigning temporary and fixed-term workers to dangerous work as provided for in Article 5(1) of the Directive.

No specific provision is made for extending medical surveillance beyond the end of a fixed-term or temporary employment relationship.

Cyprus has not taken advantage of the option provided for in Article 5(1) of the Directive.

Article 5(2) of the Directive is implemented by Article 7 of the Regulations under which employers or self-employed persons must provide for the medical surveillance of employees with a fixed-term employment relationship or with a temporary employment relationship, on the basis of Regulations 173/2002. The article also provides that: 'In any other case, the medical surveillance of the employees shall be secured by the temporary employment office provided the employees continue to be employed by it.'

There is no provision for extending medical surveillance after the end of the employment relationship according to the option set out in Article 5(3) of the Directive.

The **Czech Republic** has not availed itself of the option referred to in Article 5(1) of the Directive. Compulsory special medical surveillance is required under Section 103(1) of the Labour Code. These provisions apply to all workers, including fixed-term and temporary workers.

Czech law does not take advantage of the option provided for under Article 5(3) of the Directive.

It seems that **Denmark** has not made use of the option referred to in Article 5(1) of the Directive. Article 63 of the Working Environment Act governs special medical surveillance applicable to certain industries, occupations or groups of workers. As regards the option provided for in Article 5(3), Article 2 of the Executive order No 1165 provides for a possibility for the Danish working environment authority to require health examinations to be performed before and during the employment relationship if the work concerned involves potential health hazards.

Estonia has not taken advantage of the option referred to in Article 5(1) of the Directive.

A general procedure for the medical surveillance of employees is provided for in Regulation 74 of the Minister of Social Affairs' 'Procedure on Medical Surveillance of Employees', adopted on 24 April 2003, as amended by Regulation 26 of 28 February 2006. Additionally a number of national Regulations adopted on the basis of the Occupational Health and Safety Act provide for medical surveillance in various specific fields, including in relation to dangerous chemical or biological substances. It seems that provisions against discrimination in the ECA are sufficiently broad to be interpreted as also prohibiting discrimination against fixed-term and temporary workers in relation to the medical surveillance requirements.

Estonian law does not take advantage of the option provided for in Article 5(3) of the Directive.

Finland does not avail itself of the option referred to in Article 5(1) of the Directive. However, special surveillance is mandatory in Finland for certain specific tasks involving

exposure to chemicals or dangerous substances. The Act on Health Care at Work (743/1978) provides for regular medical examinations in respect of work associated with specific health and safety risks. The Council of State decree 1485/2001 provides for medical examinations in jobs presenting a special risk of illness. The Finnish legislator seems not to have taken advantage of the option provided for in Article 5(3).

France exercises the option referred to in Article 5(1) of the Directive. Both Article L122-3 (for fixed-term contracts) and Article L124-2-3 (for agency work) of the Labour Code prohibit using workers as referred to in Article 1 of the Directive for some 'particularly dangerous work', to be identified by orders of the Ministry of Labour and the Ministry of Agriculture.

There is no rule concerning special medical surveillance of employees recruited on a fixed-term contract. They are subject to the same medical examinations and surveillance as any other employees in the undertaking. However, French law has adapted these general rules to the particular case of temporary workers. In principle, the occupational health of temporary workers is a matter for the employer, i.e. the temporary employment agency (Article L. 124-4-6 sentence 3 of the Labour Code). Depending on the size of its payroll, the temporary employment agency must either have its own independent medical service or make use of an inter-company medical service.

Generally, all employees are subject to special medical surveillance when they are assigned either to a post associated with particular hazards because of exposure to specific occupational disease factors (performance of certain work, handling of certain products or exposure to biological agents) or to certain work involving special requirements or special risks. In either case supplementary examinations are required to enable the occupational physician to evaluate the employee's fitness for the job.

There is no particular provision entitling employees under a fixed-term employment contract or temporary workers to extended medical surveillance after the end of their employment relationship.

Germany does not avail itself of the options provided for in Article 5(1) and (3) of the Directive. Regarding the obligation for medical surveillance, it seems that the same rules apply to all workers. However, no information is available on the content of these rules. It seems that the Occupational Medical Care Order, soon to come into force, will make health check obligations clearer.

In **Greece**, Presidential Decree 17/1996 does not exercise the option of prohibiting temporary workers from performing certain dangerous activities as provided for in Article 5(1) of the Directive. However, it provides for the medical surveillance of all workers. As regards temporary workers, user undertakings are obliged – before a worker is made available to them – to specify *inter alia* the special medical surveillance required by the particular type of work (Article 22(8) of Law 2956/2001). The general rules on medical surveillance seem to apply to atypical workers.

Hungary has not availed itself of the options provided by Article 5(1) and 5(3) of the Directive.

Decree No 33/1998 of the Minister of Welfare provides that workers with an employment relationship are subject to periodic medical surveillance. This applies to a number of

categories including those exposed to the effects of physical and chemical pathogens, and those with an increased risk of accident. Following the principle of equal treatment enshrined in national legislation, these rules apply to fixed-term and temporary workers.

Ireland does not avail itself of the options provided for in Article 5(1) and (3) of the Directive. Employers are required, in relation to all workers and all types of work, to conduct a hazard identification and risk assessment under Section 19 of the Safety, Health and Welfare at Work Act 2005 and then to document the relevant prevention, control and protection measures in a safety statement under Section 20 of theAct. When the risks have been assessed, the employer must ensure that *all* employees are offered appropriate health surveillance with regard to the risks to their health and safety identified by the assessment, in accordance with Section 22 of the Act. In Ireland's primary legislation – the Safety, Health and Welfare at Work Act 2005 – the definition of employee in Section 2 embraces atypical workers. There are no specific provisions regarding health surveillance for atypical workers.

In **Italy**, Article 3(1)(d) of Legislative Decree No 368/2001, as subsequently amended and supplemented, prohibits the use of fixed-term contracts by undertakings which have not performed a risk assessment. A similar provision relating to temporary work may be found in Article 20(5)(c) of Legislative Decree No 276/2001 as subsequently amended and supplemented. To that extent, Italy can be considered to have made use of the option provided for in Article 5(1) of the Directive. For other situations, there is a general duty under Article 41 of Legislative Decree 81/2008 to provide health surveillance when the work exposes a worker to health risks.

Latvia has not availed itself of the option referred to in Article 5(1) of the Directive.

Article 15 of the Labour Protection Law provides that employers must ensure mandatory health examinations for all employees whose state of health is affected or may be affected by work environment factors which are harmful to health, and for those employees who have special conditions at work. The Labour Protection Law has not used the option provided for under Article 5(3) of the Directive.

In **Lithuania**, there is no prohibition of dangerous work for atypical workers, as permitted under Article 5(1) of the Directive. Employees, including those with an employment relationship referred to under Article 1 of the Directive, who are likely to be exposed to occupational risk, or who use dangerous carcinogenic substances during the course of their employment, must undergo a pre-entry medical examination and periodic medical examinations during the course of employment under Article 265(2) of the Labour Code.

Some possibilities are offered to workers to benefit from medical surveillance beyond the duration of their employment relationship (for instance in case of exposure to carcinogens, mutagens and asbestos) but no detail is provided on the exact procedure for guaranteeing appropriate follow-up of this category of workers; the obligation on the worker to undergo a medical examination every five years might not be sufficient in this context.

In **Luxembourg** there is no statutory provision which prohibits employees on a fixed-term or temporary contract from performing certain dangerous work as provided for in Article 5(1) of the Directive. Medical surveillance, which is mandatory for all employees, includes a pre-recruitment medical examination. Medical surveillance also includes regular follow-up examinations, notably in the case of workers exposed to the risk of occupational disease. There is no specific rule which provides for extending medical surveillance beyond the end of

a fixed-term employment relationship. Only the nature of the risk to which the employee has been exposed is relevant to such extension. These medical surveillance rules apply to all workers, including temporary workers. Medical surveillance is under the responsibility of the user undertaking (Articles L.321.1 to L.327.2 of the Labour Code).

Malta does not avail itself of the option referred to in Article 5(1) of the Directive. No information is available on the transposition of Article 5(3).

Under Regulation 16, a worker is entitled to health examinations at regular intervals appropriate to the health and safety risks at work. Medical surveillance includes an obligation for the employer to conduct a risk assessment on workers' health, in order 'to protect, identify, and quantify any medical abnormality, and to protect the health of the individual' as well as the collective health in the workplace. Whenever a risk assessment reveals a potential disease or adverse health condition related to the work, then health surveillance is mandatory.

The **Netherlands** do not avail themselves of the option of prohibiting agency workers and workers on fixed-term contracts from performing certain types of dangerous work. With regard to medical surveillance, no distinction is made between agency workers and fixed-term contract workers on the one hand and workers with indefinite-term contracts on the other. Thus the same medical surveillance applies to all employees of an undertaking.

Poland exercises the option referred to in Article 5(1) of the Directive. Temporary employees may not be obliged to perform any particularly dangerous work, as defined in the provisions issued under Article 237 paragraphs 1 and 2 of the Polish Labour Code and in the Regulation on general health and safety at work issued in 1997. Dangerous types of work are defined in the Regulation and the employer is obliged to provide and update the list of particularly dangerous forms of work being performed in the entity. The Regulation includes dangerous activities such as construction work, deconstruction work, installation work and work performed in channels, inside technical machines and in other closed spaces.

Pursuant to Article 229, paragraph 1 of the Labour Code, all workers, including fixed-term and temporary ones, are subject to periodic medical examinations. An employer cannot take on any worker without a valid medical certificate confirming the absence of contraindications to work at a specific post (Article 229, paragraph 4).

Portugal permits the use of temporary workers in particularly dangerous workplaces provided that they are professionally qualified to work there[12]; it also requires, in addition to sufficient and appropriate training which takes account of the workers' professional training and experience, that temporary workers receive special medical surveillance, at the expense of the user undertaking (Article 186 of the 2009 Labour Code). Previously, Article 20 (3) of Act 146/99 prohibited the use of temporary workers in workplaces that are particularly dangerous for their safety and health.

In **Romania**, Government Decision No 577/2007 states that the employer has to fund and ensure the performance of all prophylactic medical services which are required for the surveillance of employees' health. No further information is available on the implementation of Article 5 of the Directive.

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[12] Article 175 of the 2009 Labour Code now states that 'temporary workers may not be used in workplaces that are particularly dangerous to their health and safety unless they are professionally qualified to work there'.

Slovakia has not availed itself of the option referred to in Article 5(1) of the Directive.

Article 5(2) of the Directive was transposed by Article 6 (1) (q) of the Act on Occupational Safety and Health Protection. When workers are assigned to dangerous work, they should be subject to specific health surveillance by qualified occupational medicine professionals. These provisions apply equally to all workers, including fixed-term and temporary workers. Slovakia has not taken advantage of the option provided for in Article 5(3) of the Directive.

Slovenia does not avail itself of the option referred to in Article 5(1) of the Directive.

As regards compliance with the requirements of Article 5(2) of the Directive, Article 35 of the Health and Safety at Work Act states that an employee may work in a workplace or in conditions where he or she is exposed to increased danger of injury or health impairment only after approval of the authorised medical practitioner stating the employee's ability for the work. An employer has to provide for periodic examinations of safe working practice for all employees working in workplaces where there is an increased danger of injury and health impairment, as established during a risk assessment. The frequency of these examinations may not be less than once every two years. Work which requires special medical surveillance is covered in more detail by the Regulation on medical surveillance of workers exposed to risks (Official Journal RS, Num. 3-86/2004). The Regulation does not distinguish between workers covered by Article 1 of the Directive and a comparable permanent worker.

Spain exercises the option referred to in Article 5(1) of the Directive. According to Article 8(1) of the Act 14/1994, potential user undertakings cannot use the services of temporary work agencies, for example, 'to carry out activities and jobs which shall be specified by regulation as being particularly dangerous to safety and health'. Royal-Decree 216/1999 identifies those circumstances in which temporary workers cannot be used on health and safety grounds. First of all, those positions in the user firm that have not undergone the appropriate process of risk evaluation are excluded; secondly, those activities listed under Article 8 of Royal Decree 216/1999, which includes mining activities, the construction sector, jobs which involve the use of explosives, etc.

Where atypical workers are assigned to dangerous work, Article 28 of the Prevention of Workplace Hazards Act 31/1995 states that they are entitled to regular medical examinations under the terms set out in general rules concerning prevention services. These rules include medical examinations at regular intervals for the workers concerned.

Sweden does not avail itself of the option referred to in Article 5(1) of the Directive. Chapter 4(5) of the Swedish Working Environment Act and the various regulations adopted by the National Labour Protection Council require special surveillance for certain specified tasks, i.e. those involving potential exposure to chemical or dangerous substances. This provision applies to all categories of workers who perform such tasks or exercise such occupations. The Swedish legislator has not availed itself of the option provided for in Article 5(3).

The **United Kingdom** does not avail itself of the option provided for in Article 5(1) of the Directive. However, national legislation requires employers, as well as user undertakings, to perform a risk assessment. Once the risks have been assessed, employers must ensure that their employees are afforded appropriate health surveillance with regard to the risks to their health and safety identified by the assessment.

6. PROTECTION AND PREVENTION SERVICES

Article 6 of the Directive states that:

'Member States shall take the necessary measures to ensure that workers, services or persons designated, in accordance with Article 7 of Directive 89/391/EEC, to carry out activities related to protection from and prevention of occupational risks are informed of the assignment of workers with an employment relationship as referred to in Article 1, to the extent necessary for the workers, services or persons designated to be able to carry out adequately their protection and prevention activities for all the workers in the undertaking and/or establishment.'

The Framework Directive establishes, through its Article 7, an obligation on employers to designate one or more workers to carry out activities related to the prevention and protection of occupational risks for the undertaking and/or establishment or, if the internal capabilities are insufficient, to enlist competent external services or persons.

Article 6 of the Directive makes special provision for those services which should be informed of the assignment of atypical workers to the extent necessary to carry out their protection and prevention activities.

The following Member States clearly provide for an obligation to inform competent bodies of the presence of atypical workers in the undertaking: *Austria, Cyprus, Finland, Germany, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain and United Kingdom*

From the information collected at national level, one can draw the conclusion that many Member States do not fulfil the requirement of Article 6. They do not provide explicitly for the obligation to inform bodies responsible for protection and prevention of the presence of fixed-term and temporary workers in undertakings. While such Member States declare that their national rules comply with the Directive's provisions, they fail to explain how the body responsible for protection and prevention will be able to carry out its duties when necessary, without this information. This is the case for *Belgium, Bulgaria, Czech Republic, Denmark, Estonia, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania and Romania*.

However, concerning *Belgium, Denmark, Hungary, Lithuania, the Netherlands and Sweden*, it seems that services or bodies responsible for protection and prevention can have this information if they so require.

In **Austria,** according to § 76 subparagraph 82 ASchG, employers must inform safety experts separately when workers are recruited on a fixed-term or open-ended basis or when they are temporarily hired pursuant to § 9 ASchG. Under § 81 subparagraph (2) ASchG, employers must inform occupational physicians separately when workers are recruited on a fixed-term or open-ended basis or when they are temporarily hired pursuant to § 9 ASchG.

Belgian law does not require employers to inform persons and services responsible for health and safety that they are employing workers on a fixed-term employment contract. Article 147(c) of the RGPT merely provides that a list of workers subject to special medical surveillance is to be made available to the workers' representatives on the safety, hygiene and improvement of workplaces committee, or if there is no such committee, to the trade union delegation, and to administrative bodies responsible for monitoring health and safety issues. Pursuant to Article 5(4) of the Royal Decree, user undertakings must keep a list of all their

temporary workers, showing in particular their names and the posts they occupy. Under this article, the information obligation concerns only temporary workers and not workers on a fixed-term employment contract. This does not seem to transpose fully Article 6 of the Directive.

As for **Bulgaria**, there is a duty under Article 6 of Ordinance No 5 of 20 April 2006 to inform designated persons about the assignment of fixed-term and temporary workers.

In **Cyprus**, Article 6 of the Directive was transposed by Article 8 of the Regulations, which states that an employer who hires fixed-term or temporary workers must inform employees, service providers, or persons appointed in accordance with Regulations 173/2002, who undertake activities of protection and prevention of risks, to the extent necessary so that they can suitably exercise the tasks of protection and prevention for all employees in the undertaking. These provisions appear to be in conformity with the Directive's provisions.

In the **Czech Republic**, Article 7 of Directive 89/391/EEC was transposed by Sections 9 to 11 of the Occupational Health and Safety Act, which regulate the prevention of occupational risks. Section 101(1) of the Labour Code provides that managers have responsibility for occupational health and safety, both prevention and protection.

There is no explicit duty to inform designated persons about the assignment of fixed-term and temporary workers in line with the requirements of Article 6 of the Directive.

Danish law does not seem to provide for the information requirement set out in Article 6 of the Directive. According to Article 3 of Executive Order No 575, each enterprise of more than 10 employees has to set up a safety group which is in charge of monitoring the working environment and conducting workplace assessments. As the safety group includes safety representatives, it is supposed to be informed of the presence of new employees, including atypical workers. However, there is no obligation to inform the prevention and protection services concerned.

In **Estonian** legislation, there does not seem to be any specific information requirement to let protection and prevention services know about those with an employment relationship as referred to in Article 1 of the Directive. Article 16 of the TTOS provides for organisation, duties and training of working environment specialists; Article 17 governs the role of working environment representatives and Article 18 deals with working environment councils. However, Estonian Law does not seem to comply with the requirements of Article 6 of the Directive.

In **Finland**, Section 3 of the Occupational Safety and Health Act provides that employers must inform personnel responsible for health care, as well as the workers' health and safety representatives, whenever they recruit temporary workers.

In **France**, national law does not seem to contain any provision requiring the undertaking to inform the bodies, services or persons responsible for risk prevention and safety of the recruitment of employees on a fixed-term or temporary employment contract, as required by Article 6 of the Directive.

In **Germany**, Article 6 of the Directive was transposed by Article 2(2) sentence 3 and Article 5(2) sentence 3 of the Safety at Work Act (Arbeitssicherheitsgesetz or ArbSiG). These amendments provide that employers must inform the occupational physicians and

occupational safety specialists whenever they recruit workers with a fixed-term employment relationship or workers assigned to them to accomplish a specific task.

The **Greek** Presidential Decree 17/96 does not seem to make any provision for specific information of persons and services responsible for protective and preventive measures in respect of the recruitment of workers on a fixed-term or temporary employment contract.

The **Hungarian** legislation does not seem to contain specific provisions requiring the undertaking to inform the bodies, services or persons responsible for risk prevention and safety of the recruitment of employees on a fixed-term or temporary employment contract as required by Article 6 of the Directive. However, a work safety agent is appointed in every enterprise and may request any information necessary for the performance of his tasks regarding safety and health within the undertaking.

Irish Law does not seem to contain any provision requiring an undertaking to inform the bodies, services or persons responsible for risk prevention and safety of the recruitment of employees on a fixed-term or temporary employment contract as required by Article 6 of the Directive.

Section 18(5)(d) of the 2005 Act provides for the appointment of a health and safety 'competent person' to assist employers in complying with safety and health legislation. The employer must provide the competent person with information on factors which affect or may affect the safety, health and welfare of the employees. The obligations imposed on employers in Section 18(5) of the Safety, Health and Welfare at Work Act 2005 do not extend to a competent person under a contract of employment. Work will now commence on the drafting of an amendment to the Safety, Health and Work Act 2005 to enable Ireland to be fully compliant with the provisions of this Article.

In **Italy,** there is a list of specific information to be provided by employers to the persons and services responsible for applying protective and preventive measures in the field of health and safety. These measures include the risk assessment performed pursuant to Articles 28 and 29 of Legislative Decree No 81/2008 as subsequently amended and supplemented. Article 28(1) of this Legislative Decree stipulates that the risk assessment must consider the risks 'linked to the specific type of contract under which the work is performed'; for the purpose of complying with this provision, employers will therefore have to inform the person responsible for the occupational health and safety service what types of contract are in use in the undertaking, in order to enable the service to assist them in assessing the risk presented by decisions on such matters from the point of view of occupational health and safety.

In **Latvia**, there does not seem to be any specific requirement to inform designated persons of the assignment of employees on a fixed-term or temporary employment contract, as required by Article 6 of the Directive.

Lithuania does not seem to have adopted specific national legal provisions expressly transposing Article 6 of the Directive. However, it should be mentioned that under Article 25(6) and Article 27(1) of the Law on Safety and Health at Work, the services responsible for health and safety issues within enterprises have to train all workers before they start their duties and should therefore be de facto informed of their presence in the enterprise.

In **Luxembourg**, pursuant to Article 312-3 paragraph (7) of the Labour Code, 'worker(s) and service(s) must be informed of the recruitment of workers on the basis of a fixed-term

employment contract or workers assigned on the basis of a contract for the hiring of labour to the extent necessary for them to be able to carry out adequately their protection and prevention activities for all the workers in the undertaking and/or establishment'.

In **Malta**, Regulation 9 obliges the employer to ensure that designated workers or services are informed when temporary workers are assigned so that the former are able to carry out their protection and prevention duties for the benefit of all concerned.

In the **Netherlands**, the Working Conditions Act does not contain any particular obligation as regards informing persons or services about the assignment of temporary workers. This is so because based on Article 13, sections 4, 5 and 6, these persons or services should be in a position to acquire all the information they need to perform their legal tasks. In principle these workers are on the same footing as other employees in the user undertaking and so temporary workers are under the responsibility of the services covered by Article 8. Article 13(4) to (6) already provides that the employer must give the persons concerned the opportunity to perform their duties properly in an independent and autonomous manner. A refusal by the employer to provide information on the employment of agency workers and/or fixed-term contract workers would contravene these paragraphs. The Netherlands therefore consider that there is no need for an explicit provision on providing information in the case of fixed-term contract workers and employment agency workers.

As for **Poland,** the Work Safety and Hygiene service established under Article 237 (11) of the Labour Code should receive information on temporary workers and fixed-term workers taken on by an employing establishment in order to monitor the proper application of safety and health rules.

The legislation currently in force in **Portugal** gives the user undertaking five days to report the start of work by temporary workers to occupational health and safety services, workers' representatives for occupational health and safety, workers with special duties in this area and works councils (Article 186 of the 2009 Labour Code). A similar requirement is in place for employers who recruit fixed-term workers: employers who conclude fixed-term contracts must also report this to the works council, providing their reasons for doing so (Article 144 of the 2009 Labour Code); they must also inform the occupational health and safety services and any workers with special duties in the area of occupational health and safety of this (Article 19 of Law No 102/2009 of 10 September 2009).

The occupational health and safety services must maintain for consultation up-to-date lists of workplace accidents that have resulted in time off on the grounds of incapacity for work and of any accidents or incidents of particular seriousness from an occupational safety standpoint, together with any reports pertaining thereto (Article 98 of Law No 102/2009 of 10 September 2009).

As for **Romania**, there does not seem to be any specific requirement to inform designated persons of the assignment of employees on a fixed-term or temporary employment contract, as required by Article 6 of the Directive.

In the **Slovakian** Act on Occupational Safety and Health Protection, §6(6) provides that the employer must, for the sake of safety and health at work, inform the preventive and protective services in writing of the employment of employees for a fixed term and of temporary employees.

In **Slovenia**, pursuant to Article 43 paragraph 2 of the Employment Relationships Act, the employer must inform the expert worker or expert department performing expert tasks in the area of safety and health at work when fixed-term workers or temporary workers start working in the undertaking.

In **Spain**, risk prevention services are governed by Articles 30 to 32 of the LPRL. They are responsible for information, training and medical surveillance, in respect of both fixed-term workers and employees of temporary employment agencies. In compliance with Article 6 of the Directive, Article 28(4) of the LPRL provides that: 'Employers shall inform the workers responsible for prevention and protection or, where appropriate, the prevention service provided for in Article 31 of this Act, of the assignment of workers within the meaning of this article, to the extent that this is necessary for them to fulfil their duties in respect of all workers in the undertaking.'

Swedish Law does not seem to contain any provision requiring the undertaking to inform the bodies, services or persons responsible for risk prevention and safety of the recruitment of employees on a fixed-term or temporary employment contract as required by Article 6 of the Directive. However, it seems that they are de facto informed of the presence of these workers when conducting their obligatory health and safety duties as representatives of the employer. Under Swedish law, it is the employer that has full responsibility for the work environment. However, under Section 6 of the Swedish Work Environment Authority's rules (AFS 2001:1) on systematic occupational health and safety measures [*Arbetsmiljöverkets föreskrifter om systematiskt arbetsmiljöarbete*], employers must divide the tasks in their business such that one or more managers, supervisors or other workers are entrusted with acting to prevent work-related risks and to achieve a satisfactory work environment. These rules transpose Article 7 of the Framework Directive. It was therefore considered not necessary to provide for an explicit obligation to inform persons responsible for worker protection that members of staff have been employed on a temporary basis, since this is something that these persons would know anyway in their role as representatives of the employer.

For the **United Kingdom**, Regulation 7(1) and (3) of the Management of Health and Safety at Work Regulations 1999 in Great Britain provides for the designation of competent persons to assist with the implementation of health and safety measures, and Regulation 7(4)(b) transposes Article 6 of the Directive. It seems that national rules oblige employers to inform these services of the assignment of temporary and fixed-term workers in their undertaking.

7. TEMPORARY EMPLOYMENT RELATIONSHIPS: INFORMATION AND RESPONSIBILITY

Article 7 of the Directive states that:

'Without prejudice to Article 3, Member States shall take the necessary steps to ensure that:

1. before workers with an employment relationship as referred to in Article 1 (2) are supplied, a user undertaking and/or establishment shall specify to the temporary employment business, inter alia, the occupational qualifications required and the specific features of the job to be filled;

2. the temporary employment business shall bring all these facts to the attention of the workers concerned.

Member States may provide that the details to be given by the user undertaking and/or establishment to the temporary employment business in accordance with point 1 of the first subparagraph shall appear in a contract of assignment.'

Article 8 of the Directive states that:

'Member States shall take the necessary steps to ensure that:

1. without prejudice to the responsibility of the temporary employment business as laid down in national legislation, the user undertaking and/or establishment is/are responsible, for the duration of the assignment, for the conditions governing performance of the work;

2. for the application of point 1, the conditions governing the performance of the work shall be limited to those connected with safety, hygiene and health at work.'

Articles 7 and 8 of the Directive are specifically targeted at temporary agency workers. These provisions aim to clarify responsibilities between user undertakings and temporary employment agencies. Article 7 provides for a duty to inform workers, before their assignment, of the occupational qualifications required and the specific features of the job to be filled. The user undertaking must inform the temporary employment agency, and the latter has to advise the worker accordingly. Member States may provide that the information is to appear in a contract of assignment. Article 8 states that the user undertaking will be responsible for the conditions governing performance of the work for the duration of assignment of a temporary worker.

Most Member States have implemented adequately the requirements of the Directive. Generally, national legislations recognise the responsibility of the user undertaking for the conditions governing performance of work for the duration of assignment of a temporary worker. However, it is still not clear in a few instances whether user undertakings are responsible or not. This is the case for *Latvia.* The system of dual responsibility in *Finland, Portugal and the United Kingdom* may lead to legal and practical difficulties as well.

The main transposition problem lies in the duty to inform the temporary worker. In some cases, the user undertaking has to inform the worker directly. But in other Member States, although the user undertaking has to inform the temporary employment agency about the occupational qualifications required and the specific features of the job to be filled, no provision expressly obliges the agency to inform the worker of these aspects before his or her assignment. This clearly constitutes inadequate transposition of Article 7 of the Directive. Not all Member States use the option to provide for a written contract of assignment.

In **Austria**, pursuant to Article 9(3) of the *ASchG* the user undertaking is required, prior to the assignment of a worker, to inform the temporary employment agency of the occupational skills and knowledge required and the specific features of the job to be filled as well as the health requirements. Under Article 9(4) of the ASchG, temporary employment agencies are obliged to inform workers, before their assignment, of the aptitudes or specialist knowledge necessary for a job or activity. This information may be given verbally or in writing.

According to Article 9(2) of the ASchG, during the employment of temporary workers the user undertaking is deemed to be the employer within the meaning of the legislation; hence, the occupational health and safety requirements concerning assigned workers which the ASchG imposes on the employer apply to the user undertaking. Article 8 of the Directive, on the user undertaking's general responsibility for safety, hygiene and health at work, appears to be transposed by Article 3(1) of the ASchG, which requires the employer to ensure the protection of workers' health and safety in all work-related contexts.

In **Belgium**, the Royal Decree of 17 February 1997 requires the user undertaking to inform the temporary employment agency, before recruitment, of the occupational qualifications required and the specific features of the job to be filled, as well as the results of the risk assessment pertaining to the work to be done. This information must be provided to the temporary employment agency for each job and for each temporary worker in the context of a contract between the user undertaking and the temporary employment agency (Article 2 of the Royal Decree). If the job in question is a hazardous one, the user undertaking must indicate the nature of the physical, chemical and biological agents to which the worker is liable to be exposed, as well as other specific features of the post. If the job exposes the temporary worker to work-linked constraints, the type of constraints must be specified. However, these provisions do not seem to impose a duty to inform the temporary worker of the occupational qualifications required for the job.

Article 5(1) of the Royal Decree of 19 February 1997 provides that the user undertaking is responsible for working conditions as regards safety and hygiene at work such that the temporary worker is afforded the same level of protection as other workers in the undertaking.

Working conditions for temporary workers are also regulated by the Collective Labour Agreement No 36, concluded by the National Labour Council and given force of law by the Royal Decree of 9 December 1981.

As for **Bulgaria**, Article 7 and Article 8 of Ordinance No 5 of 20 April 2006 provide for a duty to inform temporary workers about the risks to their health and safety in the workplace. Article 14 of the Law on health and safety at work (ZZBUT) requires employers to provide safe and healthy working conditions for all employees, including temporary workers, who are assigned to the work premises, sites or facilities of the user undertaking.

In **Cyprus**, Article 9(1) of the Regulations uses wording similar to that in Article 7(1) of the Directive. It provides that the user undertaking/establishment must specify the qualifications required for the worker and the features of the job. As for the duty of the temporary employment agency to inform the temporary worker, it seems that Article 9(2) of the Regulations transposes this provision.

There does not seem to be an obligation to establish a contract of assignment as provided for in Article 7(2) paragraph 2 of the Directive.

According to Article 10(1) of the Regulations, the user undertaking/establishment is responsible for the conditions under which the work is performed.

In **Czech Republic,** Section 308 of the Labour Code provides for a duty to establish a written agreement between the agency and the user, which should mention the necessary qualifications and health requirements to perform the work. Section 103 (1)(f) of the Labour Code imposes on the agency a duty to inform its workers about risks, the results of their evaluation, and measures taken to combat them.

As far as responsibility during the assignment of the temporary worker is concerned, Section 309(1) of the Labour Code states that: 'occupational health and safety is provided by the user'.

As for **Denmark**, Article 20 of the Order on the Performance of Work requires the employer to provide the necessary health and safety instructions to workers belonging to external undertakings performing tasks in the workplace. Article 21(3) also requires the user undertaking to provide information on occupational qualifications, the risks involved, etc. as required by Article 3, to the temporary agency, which in turn must communicate this information to the workers concerned.

According to Article 2, First Section of the Executive Order No 559 of 17 June 2004, the user undertaking is responsible for the conditions governing performance of the work of temporary workers.

In **Estonia**, Section 12(6) of the TTOS obliges user undertakings to inform temporary employment agencies of the workplace-related risks for temporary workers. The temporary agency must in turn inform its workers of the risks present in the workplace and instruct them about means to avoid such risks before they commence their duties. The user undertaking where the worker is assigned is responsible for the conditions governing performance of the work.

According to the available information, Article 7 of the Directive was transposed into national legislation by Section 3 of the **Finnish** Occupational Safety and Health Act.

As mentioned above, the user undertaking has to inform the temporary employment agency of the specific features of the job and define the occupational qualifications required. The agency then has the obligation to inform the worker and has to ensure that he or she has adequate occupational skills and experience and is suitable for the work concerned.

Article 3(2) of the Protection at Work Act provides that both entities, namely the user undertaking and the temporary employment agency, are to be considered as employers insofar as the legal obligations are concerned. Hence it seems that both are responsible, in their capacity as employers, for the conditions governing the performance of work.

In **France**, pursuant to Article L. 124-3 of the Labour Code, whenever a temporary employment agency assigns an employee to a user undertaking, a specific contract between the user and the temporary employment agency must be concluded in writing no later than two working days prior to the assignment. The contract must indicate the specific features of the job to be filled and, in particular, state whether it is a hazardous one. It must also identify what personal protective equipment the employee must use and, where appropriate, specify whether it is supplied by the temporary employment agency. Furthermore, under a framework

agreement on occupational health signed on 28 February 1994 by the employers' organisations representing temporary employment agencies and various representative trade unions, the contract must indicate the machinery and tools used, the materials or substances handled, the working conditions and the work environment, the specific occupational hazards present, possible contraindications, any special medical surveillance that may be required and the identity of the user undertaking's occupational physician.

All these particulars must be communicated to the temporary worker and contained in the temporary employment contract.

Pursuant to Article L. 124-4-6 of the Labour Code the user undertaking is responsible, for the duration of the assignment, for the conditions governing performance of the work as laid down by the laws, regulations and agreements which apply to the workplace.

In **Germany**, Article 7(1) of the Directive was transposed by Article 12(1) sentence 3 of the *AÜG*. The provision requires the user undertaking to specify, in a contract of assignment, the specific features of the work to be performed by the temporary worker and the occupational qualifications required.

Article 7(2) of the Directive was transposed by an amendment to Article 11(1), sentence 2, point 3 of the *AÜG*. The text requires the temporary employment agency to indicate, in the document to be handed to the temporary worker, the specific nature and characteristics of the task and the qualifications required. The German legislator has availed itself of the option provided for in the second paragraph of Article 2. Article 12(1), sentence 3 of the *AÜG* requires that a contract of assignment specify the characteristics specific to the job to be filled by the temporary worker and the occupational qualifications required.

Article 11(6), sentence 1 of the AÜG provides that the activity performed by the temporary worker at the user undertaking is subject to public law rules in the field of health and safety at work. The employer's obligations arising from this legislation apply to the user undertaking, without prejudice to any legal obligations of the temporary employment agency.

As for **Greece**, Article 22(8) of the Statutory Law 2956/2001 regarding Consolidation of the Working Rights of Temporary Employees stipulates that the user undertaking must define in a contract, before the temporary worker is at its disposal, the following information: the occupational qualifications or skills required, special medical surveillance needed, particular characteristics of the job position to be covered, and the higher or specific risks related to the job. The temporary employment agency is legally obliged to notify this information to the worker.

According to an Athens Court of Final Instance ruling (Ruling 3390/1997), it seems that when workers are assigned to a user undertaking, the latter must protect the workers against dangers to their life and health, supervise performance of the work, eliminate dangerous work, provide guidance to workers about use of dangerous machinery and alert them to the potential hazards associated with the use of such machinery.

The **Hungarian** Labour Code states that the user undertaking (hirer) must inform the temporary agency (lender) in writing about the occupational qualifications required and the specific features of the job to be filled. The agreement between the lender and hirer must be in writing and contain at least the following elements: duration of the assignment, place of the work, and features of the work to be performed (Section 193/G Subsection 1 of the Labour

Code). Moreover, the hirer must inform the lender in writing of the working conditions concerning the work to be performed and all the circumstances which are relevant to the employment of the worker (Section 193/G Subsection 2 of the Labour Code)**.**

Section 193(H) (6) of the Labour Code obliges the temporary employment agency to inform the temporary workers in writing about the occupational qualifications required and the specific features of the job concerned. In addition the employer must always check whether the employee has the prescribed skills and authorisations for the job in question (Section 51 of Mvt.).

Under Section 193(G) (5) of the Labour Code, the user undertaking is considered to be the employer in terms of health and safety protection of the worker and is responsible for conditions (safety, hygiene and health) of work for the duration of the assignment.

In **Ireland**, Article 7(1) of the Directive is transposed by Section 9(4)(b) of the 2005 Act which provides for an obligation to inform the temporary employment agency about the occupational skills or qualifications required for the job and the specific features of the work. The user undertaking must ensure that the temporary employment agency fulfil its obligation to bring these facts to the attention of the workers concerned, as provided for in Article 7(2).

Section 8 of the 2005 Act provides that the employer's duty to ensure safety, health and welfare in the workplace also extends to temporary contract employees.

In **Italy**, with regard to information for temporary workers, paragraph 5 of Legislative Decree No 276/2003 stipulates that in the case of companies which dispatch temporary workers to other undertakings, 'the supplier shall inform the workers of the health and safety risks in connection with production activities in general', and in the case of the undertakings which use such workers, Article 36 (1) of Legislative Decree No 81/2008 states that they must provide adequate information on the specific risks that the job may entail.

As regards working conditions, Article 3 (5) of Legislative Decree No 81/2008 provides that 'all the requirements concerning prevention and protection are the responsibility of the user'. The legislation requires user undertakings to apply fully health and safety provisions to temporary agency workers, in the same way as for any other worker.

As for **Latvia**, there are no specific rules governing the relations between a temporary employment agency, a temporary worker and a user undertaking. Therefore the general rules of labour law apply to the matter. Article 16 of the Labour Protection Law stipulates that if several workers hired by different employers are assigned to a single workplace, then the employers have an obligation to cooperate regarding labour protection measures by taking into account the nature and circumstances of the work. The employers must inform each other, their employees and representatives about work environment risks, as well as provide relevant instruction to employees.

In **Lithuania**, temporary work is not recognised by law as such. Article 89(1) of the Labour Code states that employers have to provide all necessary information when they recruit workers (nature of work, qualifications, etc.). However, it seems that this provision is of a general nature and does not address the specific situation where a user undertaking has to inform a temporary employment agency of working conditions for health and safety purposes.

There are no specific provisions under the national legislation implementing Article 8 of the Directive. However, under the provisions of the Labour Code and Safety and Health at Work Law, it seems that it is the user undertaking which, for the duration of the assignment under the employment contract, has responsibility for the conditions governing the performance of work, including safety, hygiene and health aspects.

Luxembourg national legislation seems to have transposed adequately Article 7 and Article 8 of the Directive. There is an obligation on the user undertaking to provide information to the temporary employment agency as required by Article 7(1) of the Directive.

According to the Labour Code, the user undertaking and the temporary employment agency must conclude a written contract describing the characteristics of the job and the occupational qualifications required, no later than three working days after assignment of the temporary worker. The temporary employment agency must bring all these facts to the attention of the workers concerned as provided for in Article 7(2) of the Directive

The national legislation allocates clear responsibilities during the assignment of the worker. Article 12 of the Act of 19 May 1994 governing temporary employment and the hiring of labour provides that 'for the duration of the assignment, the user undertaking is exclusively responsible for compliance with the safety, hygiene and health at work conditions and for applying to these workers the laws, regulations, and administrative and contractual rules governing working conditions and the protection of employees in the performance of their work'.

In **Malta** the Directive's provisions have been transposed by Regulation 18(2), which states that an employer has to provide temporary workers with understandable information on any special qualifications or skills required for the job, any health surveillance required and the specific features of the job together with any additional specific risks. This appears to be a direct obligation towards the temporary workers, rather than an obligation to inform the employment agency as required by the Directive.

There does not seem to be any obligation to give this information through a contract of assignment.

Regulation 18 (1) transposes Article 8 of the Directive by stating that the user undertaking and/or establishment, 'shall remain responsible, for the duration of the assignment, for the conditions connected with safety, hygiene and health at work governing performance of the work.'

In the **Netherlands**, under the Working Conditions Act transposing the Directive's provisions, the user undertaking must provide information directly to the temporary worker (Article 5(5)), thus dealing with the requirement that the prospective employer must give the employment agency a precise description of, in particular, the required occupational qualifications and the specific features of the job to be done. Furthermore, the Act of 14 May 1998 on the supply of temporary workers by agencies (*Wet allocatie arbeidskrachten door intermediairs*) requires temporary employment agencies to pass on to the temporary workers concerned any information provided by the user undertaking (Article 11), thus dealing with the obligation whereby the employment agency must also pass that information on to the agency worker.

According to the Working Conditions Act (Article 1(1) and 1(2)), the user undertaking is deemed to be the employer and is therefore responsible, for the duration of the assignment, for the conditions governing performance of the work as for example described in Articles 3, 4, 5 and 8.

In **Poland**, Article 7 of the Directive is transposed by Article 9 of the Act on employment of temporary workers. This provision states that before an employment contract is concluded between a temporary work agency and a temporary worker, the temporary work agency and the user undertaking must agree in writing on the conditions of performance of the temporary work. This agreement has to include the following information: the scope of the user undertaking's responsibilities concerning safety and hygiene at work and the provision of workwear, footwear and personal protective equipment, provision of courses on safety and hygiene at work, definition of circumstances and causes of accidents at work, execution of occupational risk assessment and information about the risks.

Article 11 of the Act provides that a temporary work agency must inform a temporary worker about any agreements concluded under Articles 9 and 10 of the Act, before the contract of assignment is concluded. The information provided under Article 9 of the Act covers occupational qualifications required and the specific features of the job concerned.

Article 8 of the Directive is implemented by Article 14 of the Act on employment of temporary workers, which provides that the duties and obligations of an employer under the Polish Labour Code will apply to the user undertaking. The user undertaking is obliged to ensure the protection of health and safety at the place where work is performed.

Under **Portuguese** law the user undertaking must inform the temporary employment agency of the general characteristics of the job to be filled, which must appear in a contract of assignment. There is also an obligation to inform the works committee.

Before the start of the assignment, the user undertaking must inform the temporary employment agency in writing of the results of the assessment of the health and safety risks associated with the position to which the temporary worker will be assigned; and the temporary employment agency must in turn inform the temporary worker of the said risks (Article 186 of the 2009 Labour Code). According to Article 9(2) (e) of the Framework Act on Safety, Hygiene and Health at Work, the user undertaking must give the temporary worker appropriate information on the health and safety risks and the specific features of the job to be filled. The user undertaking must also report the start of work by temporary workers to occupational health and safety services, workers' representatives responsible for occupational health and safety, workers with special duties in this area and works councils, within five days (Article 186 of the 2009 Labour Code).

Article 185 of the 2009 Labour Code states that during assignment the temporary worker will be subject to the rules applicable in the user undertaking with regard to the method, place and duration of working, suspension of the employment contract, safety and health in the workplace and access to social facilities. Article 20 of the Law governing temporary employment agencies provides that during assignment, the worker will be subject to the hygiene, safety and occupational health rules of the user organisation in the same conditions as other workers. Moreover, the same obligation applies under the Act on safety, hygiene and health at work. Article 8(4)(a) provides that the user undertaking, even if it is not the employer, must be considered as subject to all the health and safety obligations. However, the temporary employment agency is also liable for damages in the event of an accident at work

(Act No 100/97 of 13 September). The temporary employment agency is required to provide workplace accident insurance (Article 13 of Decree-Law No 260/2009 of 25 September 2009) covering temporary workers. However, the user undertaking may be held jointly and severally liable for damages resulting from an accident in the workplace if it concludes a user contract with a temporary employment agency to which a copy of the workplace accident insurance covering the temporary worker and the work to be performed by that worker is not appended (Article 177 of the 2009 Labour Code).

In **Romania**, according to the Government Decision No 577/2007 and to the Law No 53/2003 (Labour Code), the temporary employment business and the user undertaking have to conclude a written contract of assignment before a temporary worker starts working.

The user undertaking has to inform the temporary employment agency of the characteristics of the job, particularly the required qualifications and the actual working conditions. The temporary employment agency concludes a written temporary employment contract with the worker, which must contain the elements provided for by the legislation in force.

Throughout the period of assignment, the user undertaking is responsible for ensuring the safety, health and hygiene at work of the temporary worker as required by Article 8 of the Directive.

In **Slovakia**, Article 7 and Article 8 of the Directive were transposed by the Labour Code and the Occupational Safety and Health Protection Act. According to Article 58(9) of the Labour Code, a user undertaking must specify the working conditions in advance to the temporary employment agency, including occupational qualifications and specific features of the job to be filled and the working conditions that apply to a comparable worker.

The temporary employment agency is supposed to inform the worker concerned by means of an employment contract.

The Act on Occupational Safety and Health Protection provides that an employer is obliged to ensure that any employee assigned to its undertaking shall receive relevant information and instructions to secure health and safety in the workplace. Under §58(4) of the Labour Code, the user undertaking to which the employee is temporarily assigned must organise, manage and monitor his or her work, give him or her instructions to that end, put in place favourable working conditions and guarantee him or her safety and health protection at work equal to that provided for other employees.

As for **Slovenia**, Article 7 and Article 8 of the Directive were transposed by the Employment Relationship Act and collective agreements. According to Article 61 of the Employment Relationship Act, the temporary employment agency and the user undertaking have to conclude an agreement in writing which defines mutual rights and obligations as well as the rights and obligations of the worker. Furthermore, the user undertaking has an obligation to inform the temporary employment agency about the occupational qualifications required and a risk assessment of the job to be filled. The worker must be informed in writing about working conditions with the user undertaking as well as about the rights and obligations which are directly related to the work, before commencement of the assignment. He or she should be informed both by the temporary agency and by the user undertaking.

Slovenian law states that for the duration of the worker's assignment in the user undertaking, the latter and the worker should be in conformity with the provisions of the Employment

Relationships Act and of collective agreements, regarding rights and obligations related to the performance of work. Under Article 27 of the Labour Protection Law, an employer, in this case the user undertaking, is liable regarding the safety and health of employees at work.

In **Spain**, Article 28(5) of the *LPRL* requires the user undertaking to provide information on the risks that each job entails, both to temporary workers and to the temporary employment agency. This provision seems to transpose adequately Article 7 of the Directive.

Article 28(1) to (4) of the LPRL defines the employers' obligations and responsibilities between temporary employment agencies and user undertakings. Similarly, Articles 14 and 15 of Act 14/1994 of 1 June 1994 regulate temporary employment agencies and lay down the occupational safety and health obligations which apply to user undertakings and temporary employment agencies. According to these provisions the user undertaking will be responsible for health and safety protection at work.

As for **Sweden**, under the provisions on systematic work-environment management, an employer who hires out workers is responsible for planning and following up the work carefully, e.g. as regards the choice of workplace, duties and working hours, and summarising the experience gained in an assignment. An employer hiring out workers remains responsible for them and is obliged to carry out long-term measures relating to the working environment, e.g. with regard to training and rehabilitation.

An employer using agency staff is obliged – as far as the work involved in the assignment is concerned – to follow and apply work environment legislation in the same way as he does for his own employees. This can, for example, mean informing workers about risks that the work entails, and ensuring that they are sufficiently qualified for the work concerned.

In the **United Kingdom**, Regulation 15(3) of SI 1999/3242 transposes Article 7, and provides that the user undertaking must inform the temporary employment agency of the occupational hazards to which the temporary worker is exposed in the workplace, and the temporary employment agency must bring these facts to the attention of the workers concerned.

Section 3 of the Health and Safety at Work Act 1974 provides that the employer must organise his business in such a way that persons not employed by him who may be affected are not exposed to health and safety risks; this would seem to cover temporary workers assigned to a user undertaking, but does not appear to constitute adequate transposition of Article 8 of the Directive. It seems that in practice, in the majority of cases the responsibility would lie with the user undertaking. It is up to the relevant court to establish whether, in the circumstances of a particular case, an employment relationship exists. If it does, employer duties under health and safety legislation cannot be avoided — even if the employment business is deemed to be the employer.

8. ASSESSMENT OF THE PRACTICAL EFFECTS OF THE DIRECTIVE

Earlier chapters of this working paper have described how the different provisions of the Directive have been transposed and applied in Member States from a legal point of view. This chapter gives an overview of the practical effects of the Directive on the situation of fixed-term and temporary workers in Member States as regards their health and safety at work.

The present chapter is based on recent statistical evidence as well as the results of a study[13] commissioned by the Commission where the consultant collected information on the implementation situation from Member State authorities and from social partners.

8.1. Statistical evidence on risks

At the time of adoption of the Directive in 1991, it was feared that the increasing numbers of workers engaged in new forms of work such as fixed-term employment and temporary employment were, in certain sectors, more exposed to the risk of accidents at work and occupational diseases than other workers. Therefore the purpose of the Directive was to reduce the exposure of temporary and fixed-term workers to such risks and to ensure an equal level of protection as regards occupational health and safety in relation to other workers.

According to the Fifth European Working Conditions Survey, temporary employment (i.e temporary agency workers and fixed-term workers) has continued to increase since the adoption of the Directive. Its share in the total EU workforce has increased by 4% between 1991 and 2010. Nowadays, workers subject to the Directive represent 13.4% gross of all employees; 12.1% are on fixed-term contracts and 1.3% are on temporary agency contracts. There are considerable differences among Member States regarding the importance of atypical workers and how they are distributed by sector. According to the Labour Force Survey, in 2009 the Member States registering higher numbers of fixed-term workers in proportion to the total number of employees were Poland (26.5%), Spain (25.4%), Portugal (22%), Netherlands (18.2%), Slovenia (16.4%), Sweden (15.3%), Finland (14.6%) and Germany (14.5%). As to temporary agency workers, the highest shares in relation to total active working population in 2009 can be found in the UK (3.6%), Netherlands (2.5%), Belgium (1.7%), France (1.7%) and Germany (1.6%)[14].

In the EU27, fixed-term contracts are most common in the hospitality sector (18.3%), administration (17.2%), agriculture (16.8%), information and communication services (15.8%), other services (15.1%) and education (14.4%)[15]. As for temporary agency workers, their sectoral distribution has seen a recent trend away from use in the industrial sector (30% average) towards a growing use in the services sector (45%). Administration (4.7%), agriculture (2.8%) and information and communication services (2.7%) are the most important user sectors overall[16]. Manufacturing, however, remains an important user of temporary agency work in some Member States, such as Poland (70%) and Hungary (61%).

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13 Study to analyse and assess the practical implementation of national legislation of safety and health at work, Council Directive 91/383/EEC of 25 June 1991, Labour associados consultores, 2007.

14 According to data supplied by CIETT in 'The agency work industry around the world'., 2011.

15 Fifth European Working Conditions Survey 2010.

16 Ibidem.

Luxembourg (27%) and France (23%) make widespread use of temporary agency work in the construction sector[17].

There is evidence showing that temporary and fixed-term workers are more exposed to health and safety risks than other workers. In the EU27, 41.7% of workers with temporary employment status are exposed to risks affecting physical health[18], in comparison to an average of 39.9% of permanent workers. Certain characteristics of atypical workers such as the prevalence of young workers, their lower level of qualification and their assignment to sectors more exposed to risks, may explain this. However, it is interesting to note that, despite their greater exposure to risk, temporary workers tend to report accidents or work-related health problems less than permanent ones[19].

Data recently published by Eurofound corroborate this correlation between atypical forms of employment and overexposure to risk factors[20]. 53% of temporary agency workers and 47% of fixed-term workers are exposed to tiring or painful activities in comparison to 45% of workers with indefinite contracts. Similarly, 24% of temporary workers are exposed to vibrations and 36% are exposed to noise in comparison to respectively 22% and 30% of workers with indefinite contracts. In general, atypical workers tend to be assigned comparatively more to tasks involving standing or carrying heavy loads and less to tasks involving use of computers.

The same data illustrate how atypical workers also tend to be comparatively more exposed to psycho-social risks. Mental health risks affect 23% of temporary workers and 21% of fixed-term workers, as compared to 19% of workers with indefinite contracts. The same categories of workers, and especially temporary workers, tend to be comparatively more subject to discrimination at work, verbal abuse, violence at work, bullying and harassment. While the level of work intensity is considered high by 50% of workers with indefinite contracts, 61% of temporary workers have that perception.

These findings tie in with the Community Strategy 2007-2012 on health and safety at work, which underlines that workers whose jobs are insecure tend to be comparatively more exposed to occupational risks.

At national level, according to the data gathered, among the 13 Member States which have produced figures on the rate of accidents at work for temporary workers, seven indicate an increased risk for atypical workers. In the case of five other Member States it is not possible to determine from the statistics provided if atypical workers are more exposed to occupational accidents or diseases. According to the French national statistical office, in 2003, 12.6% of atypical workers had an accident at work, compared to 8.1% of permanent staff (including

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17 CIETT, op. cit.

18 Eurostat — Labour Force Survey 2007 ad hoc module on accidents at work and work-related health problems. Data concern workplace exposure to a number of factors to which a person is exposed more frequently or more intensively than what people experience in general day-to-day life. The factors related to physical well-being include: Chemicals, dust, fumes, smoke or gases; noise or vibration; difficult work postures, work movements or handling of heavy loads; risks of accidents.

19 LFS 2007. 2.7% of temporary workers reported an accident at work compared to 3.1% of permanent workers, and 4.7% of temporary workers reported work-related health problems compared to 7.2% of workers with permanent jobs.

20 Fifth European Working Conditions Survey 2010.

civil servants)[21]. In Spain, a study on the number of accidents at work between 1988 and 1995 showed that the rate was 2.47 times higher for temporary workers than for other workers. In 2004, the Dutch Labour Inspectorate examined 1700 work accidents reported in 2002, and it was found that 13% of the people involved in an accident at work with serious injuries were temporary agency workers, although they account for only 3% of the jobs. The same tendency applies for temporary agency workers in Germany (private sector) who are involved in 48.32 accidents per 1000 insurance cases while the general average is 37.10[22].

The seriousness of the health and safety problems experienced by fixed-term and temporary workers tends to be compounded in some sectors by the particularly painful nature of the job, as is the case with most manual workers. Higher-than-average proportions of unskilled workers hold fixed-term contracts (15%). For instance, in France, over half of temporary agency workers are exposed to manual handling of weights, in comparison to 41% of workers on fixed-term contracts and 37% of permanent workers[23].

Trade unions tend to emphasise the higher risk of occupational accidents and diseases among temporary and fixed-term workers. For instance, according to Austrian trade unions, temporary workers continue to be victims of an 'extremely large number of industrial accidents'. Spanish unions have made the same comment, showing that the rate of workplace accidents remains high in comparison to that of permanent workers and 'cannot be dissociated from the temporary and precarious nature of work'. Indeed the figures provided by them show that between 2004 and 2005 the number of deaths at work for temporary workers increased in Spain by 4.1% while it decreased by 8.4% among workers on permanent contract for the same period.

However, there is no consensus among the social partners about the existence of higher risks of occupational accidents and diseases for atypical workers. On the employers' side, some consider that the statistical evidence is too weak to support the view that there is a greater risk in the workplace for temporary workers. The statistical evidence is still largely fragmentary and this has led the trade unions to complain about the lack of consistent and comparable data and to ask for the establishment of a new system of information about workplace accidents.

From a general point of view, the Community legislative '*acquis*' has contributed to improving health and safety in the EU, as the number of occupational accidents has decreased for all workers over the period 1994-2007 (even more significantly for the period 2000-2007 – the rate of fatal accidents has fallen by 25% and the rate of non-fatal accidents has fallen by 28%)[24]. However, as there are no data broken down by type of contract over this period, it is not possible to measure the direct impact of the Directive on the health and safety of fixed-term and temporary workers. It can however be assumed that the Directive, as part of the Community '*acquis*', has contributed to the overall positive evolution of the health and safety situation. Nevertheless the absolute figures remain high, and there are still considerable differences in exposure to risks between permanent workers and fixed-term and temporary workers.

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21 Accidents and working conditions, DARES, 2007.

22 Report on temporary agency work in the EU, European Foundation for the Improvement of Living and Working Conditions, 2007, p 12.

23 Report on temporary agency work in the EU, ibid.

24 Eurostat — European Statistics on Accidents at Work (ESAW).

8.2. Assessment of the practical effect of the provisions of the Directive

8.2.1. Right to be afforded the same level of protection

As mentioned above, Article 2 of the Directive sets out its purpose as ensuring that fixed-term and temporary workers are afforded the same level of protection as regards safety and health at work as that of other workers. It sets out as well the right of fixed-term and temporary workers not to be treated differently in respect of working conditions inasmuch as the protection of safety and health at work are involved, especially as regards access to personal protective equipment on the grounds of the nature of their contract.

To comply with the Directive, most Member States have adopted provisions declaring that their health and safety legislation applies to all workers regardless of the nature of their contract. Temporary and fixed-term workers are thus afforded the same rights as the other workers.

When looking at the practical implementation of the Directive in Member States, it seems that this legal solution in transposing measures is not always sufficient to afford all workers the same level of protection regarding health and safety.

As shown above, despite somewhat fragmentary statistical evidence, there are indications that temporary workers and fixed-term workers continue to be more exposed to the risk of accidents at work and occupational diseases than other workers and therefore do not benefit from equal protection in practice.

Both sides of industry were asked in every Member State about their perception of whether the equal protection principle applied in their country. Replies were received from twelve Member States, and in six, both trade unions and employers' representatives considered that the principle applied in practice in their country, at least for fixed-term workers. In the other six Member States, even though the principle of equal treatment had been introduced in national law, the social partners still considered atypical workers as being more exposed to risks. One of the reasons given is the fact that they are assigned more often to dangerous workplaces than other workers. As regards temporary agency workers, the social partners from eight Member States agreed that such workers did not benefit from the same level of protection as other workers and were more likely to be exposed to risks in the workplace. No concern was raised in the other four Member States.

In six Member States, the social partners considered that the implementing legislation of the Directive at national level had positive effects in this respect. However, trade unions considered that the Directive's model of protection was not adapted to different forms of contracts and subcontracts, as in the construction sector for instance.

8.2.2. Information and training for temporary and fixed-term workers

One of the main issues regarding health and safety of atypical workers is their inadequate integration in the undertaking for which they are performing tasks. This is connected to their status, as they often change their place of work. Indeed a high percentage of newly-hired staff work under atypical forms of employment. Only 40% of workers who have been with an undertaking for less than one year hold an indefinite-term contract; almost 45% are hired

under an atypical form of employment and 15% hold no contract at all[25]. Another factor is young age, with the under-25s making up between 20% and 50% of all the agency workers in the various Member States. For these reasons the Directive provides for an obligation to give information and training to these workers on the risks that they may face and to assist them in adapting more quickly to the new workplace.

As regards fixed-term workers, national reports suggest that there is no major problem regarding their right to information at work. They generally receive the same information as other workers and are well informed on the different aspects of the work regarding health and safety.

In contrast, in many Member States, temporary workers often are not given sufficient information about the special occupational qualifications or special medical surveillance required or about any increased specific risks that the job may entail. The user company often does not inform properly the temporary employment agency as required by the national transposing measures of the Directive. The assignment is frequently urgent and there is no time for providing the compulsory information to the worker. 84% of temporary workers consider that they lack information about workplace risks, compared to 91% among employees with indefinite-term contracts[26].

There is in some Member States an obligation to provide a written contract, but this obligation can be bypassed by temporary agencies by using standard contracts or pro formas with the same content for all workers but without the relevant information. Sometimes the given information is inadequate, as it does not take into account the qualifications or the specific characteristics of the worker. This affects in particular migrant workers whose command of the national language may be inadequate and therefore do not fully understand the information.

Major problems with information given to temporary workers were raised in nine Member States. Only in four did the information aimed at temporary workers seem to have been transmitted appropriately.

Trade unions complain about the lack of information given to temporary workers about the nature of their assignment and the risks they may be faced with. They consider that written information, including workplace risk assessments, should be given to workers. According to the unions, efforts should be made in order to develop an improved culture of accident prevention in undertakings and to increase the number of labour inspectors.

8.2.3. Medical surveillance of workers and prohibition of dangerous work

While no major problem is raised regarding fixed-term workers, there are concerns about the quality of medical surveillance provided to temporary workers. They often do not benefit from the medical checks imposed by national legislation for different reasons: incomplete availability of external services; shortage of occupational doctors in external services; employment periods that are too short to grant access to health surveillance; lack of information on the need for follow-up health checks. There are also difficulties when temporary workers leave the job market and are not followed up. It is not always clear who

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[25] Fourth European Working Conditions Survey, European Foundation for the Improvement of Living and Working Conditions, 2007, p 9.

[26] Fifth European Working Conditions Survey 2010.

should provide the health check for temporary workers — the user undertaking or the temporary employment agency.

Under Article 7 of the Framework Directive employers are obliged to designate one or more workers to carry out activities related to the prevention and protection of occupational risks for the undertaking and/or establishment or, if its internal capabilities are insufficient, to enlist competent external services or persons. To supplement this provision, Article 6 of the Directive (91/383/EEC) sets out some special requirements applying to these services, which should be informed of the assignment of atypical workers to the extent necessary to carry out their protection and prevention activities.

As mentioned before, many Member States have not implemented this provision in their legal order. And where it is implemented it appears that fixed-term and temporary workers do not actually benefit from the support of the designated persons or services. One of the consequences is that these workers may not be properly informed about the risks in the undertaking and are not given the means to be protected against these risks. Therefore they are more likely to be exposed to risks. The other consequence is that when an accident occurs, the designated person or service may not be able to take the necessary measures to protect and support the worker(s) concerned if they are not aware of their presence in the undertaking.

Very few Member States have made use of the option in Article 5(1) of the Directive to forbid dangerous work for fixed-term and temporary workers. In such cases, the prohibition is contested by employers' representatives. They claim that no data or information is available to indicate if this measure has decreased the accident rate among temporary workers. Spanish employers consider that 'there are no grounds for continuing to exclude temporary [workers] from performing particular types of work', since 'such workers have not been exposed to greater risks or suffered more accidents at work or occupational illnesses than other workers'. Moreover, they claim that a majority of temporary employment agencies would have the same standards of health and safety protection for their employees as the major companies hiring permanent staff.

8.2.4. Responsibility in temporary employment relationships

The Directive provides that for the duration of the assignment, the user undertaking is responsible for the conditions governing performance of the work connected with safety, hygiene and health. Many Member States have declared that this provision has been correctly transposed but it seems that in practice some problems still arise. At least in seven Member States it is not always clear to the worker who should take the responsibility for health and safety conditions. For three other Member States responsibilities are clearly attributed to the user undertaking.

8.2.5. Implementation and enforcement

Efforts to disseminate information about the provisions of the Directive are reported in nine Member States. It seems that the information given by public bodies in Member States is of a general nature without focusing on temporary and fixed-term workers. Most of the Member States have published brochures and leaflets on health and safety at work for all workers including atypical workers. It is reported that the main information activities focusing on the provisions of the Directive are conducted by trade unions or other social partners. Employers' associations for instance organise workshops for their members and for human

resource services to raise awareness about this issue. No specific dissemination action targeting SMEs was reported.

Monitoring and enforcement actions or mechanisms were reported by ten Member States. The enforcement of the Directive is the responsibility of labour inspectorates or other specialised bodies in most of the Member States.

For a majority of Member States, concerns were raised regarding enforcement. The main concern is that there is no specific action focusing on temporary workers and fixed-term workers. Only two Member States seem to target these workers when carrying out inspections. Additional problems are identified, including the lack of training of inspectors on the provisions of the Directive and the lack of sufficient staff and resources to conduct inspections.

8.3. Assessment of potential administrative burdens

When assessing the practical effects of the Directive, it is appropriate to analyse the Directive in the context of the Action Programme for Reducing Administrative Burdens in the European Union[27], in order to determine whether its implementation requires an excessive amount of information from companies, which could be regarded as an administrative burden.

The Directive imposes two obligations on businesses to provide information to public authorities or private parties:

Firstly, according to Article 6 of the Directive, businesses must ensure that workers, services or persons designated pursuant to Article 7 of Directive 89/391/EEC to be responsible for activities related to protection from and prevention of occupational risks are informed of the assignment of atypical workers to the extent necessary for them to be able to carry out adequately their protection and prevention activities for all the workers in the undertaking and/or establishment. This provision gives enough flexibility to companies to implement it. The competent entity to be informed here (workers, services or persons designated to be responsible for activities related to protection from and prevention of occupational risks) is determined by the Framework Directive (89/391/EEC). These entities could not perform their duties if they were not informed of the presence of the workers in the company. The duty to inform them is therefore necessary for compliance with the obligations laid down in Article 7 of the Framework Directive.

No Member State has reported an excessive administrative burden on businesses created by this provision. The social partners themselves did not mention any particular concern in this respect.

Secondly, according to Article 7 ‘a user undertaking and/or establishment shall specify to the temporary employment business, inter alia, the occupational qualifications required and the specific features of the job to be filled’. The user undertaking is best placed to know the risks

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[27] Communication from the Commission on an *Action Programme for Reducing Administrative Burdens in the European Union*, COM (2007)23 final, 23.01.2007. This Action Programme aims to suppress unnecessary administrative burdens on companies when applying Community law. Administrative costs are defined as the costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties. Administrative burdens are the administrative costs for collection of information that would not be done by businesses without the EC legal provisions.

involved at the workplace, and is directly responsible for the health and safety of workers during the performance of their work. It is therefore consistent with the objectives of the Directive, that the workers are informed of the dangers of the workplace to which they are assigned before they start working.

With the exception of the Netherlands, no Member States or social partners have raised the issue of an excessive administrative burden on businesses caused by this obligation. The Netherlands indicated that their largest employers' federation (VNO-NCW) advocates an explicit exemption from the requirement to provide the information in writing to employment agencies. On the other hand, the largest employees' organisation (FNV) has proposed that the Directive be amended in order to clarify that it should be for the undertaking calling on the services of an agency worker to provide to the worker adequate information about any risks arising from the working conditions[28].

9. CONCLUSIONS

This paper presents the outcome of monitoring of the implementation of the Directive by the Commission services. It is based on the information made available through two studies and the replies by Member States and social partners to a specific questionnaire.

The Directive has now been transposed by all Member States. The large majority implemented the Directive by way of national legislation, regulations and administrative provisions; very few made use of collective agreements for its implementation.

The Directive deals with two categories of workers: those on fixed-term employment contracts and those with temporary employment relationships (i.e. established through a temporary work agency). Its *'raison d'être'* is the assumption that such workers are more exposed to health and safety risks in comparison with the situation of workers with a permanent contract. The purpose of the Directive is to ensure that these two categories of workers enjoy the same level of protection against occupational health and safety risks as workers with a standard employment contract.

It is apparent that, while all Member States have implemented measures that cover the two categories of workers described by the Directive, they tend to have made comparatively more changes to national legislation in connection with workers employed by temporary employment agencies. This may be due to the legal complexity of the three-way relationship which is involved. As for fixed-term workers, the majority of Member States have implemented the Directive by means of their general rules on health and safety stating that they will apply to them, rather than enacting specific legislation. The problem is that a right to equal treatment is not automatically equivalent to a right to be afforded the same level of protection in a context where temporary and fixed-term workers are more exposed to risks.

In general terms, the implementation of the Directive does not raise substantial issues of interpretation or legal difficulties. There have been no recent cases brought before the Court and the number of complaints is very low. However, a number of problems with the

[28] The Dutch authorities themselves suggested making the Directive more flexible on this issue of provision of information, for example by giving Member States the option to allow social partners to agree different arrangements in collective labour agreements on condition that they guarantee at least the same level of protection.

implementation of the Directive have been identified, suggesting insufficient implementation by some Member States. Such problems are mainly related to the quality, timeliness and responsibility of providing information, especially to temporary workers. The achievement of the main purpose of the Directive may be impaired as a result, since information is a vital component of risk prevention and a condition for ensuring equal protection for the categories of workers that the Directive is aimed at. The following are the main problems identified:

- The obligation for the user undertaking to inform the worker of the risks he/she faces, including any specific increased risks that the job may entail, before he/she starts work is not clearly established in some legislations. Either this obligation is passed on to the employer, or it is not described in sufficiently specific terms, or the timing is not clear.

- Many Member States do not provide explicitly for the obligation to inform bodies responsible for protection and prevention of occupational risks in an undertaking or establishment of the presence of fixed-term and temporary workers. This lack of information may make the competent body unable to carry out properly its duties as regards such workers.

- Many Member States do not implement the provision that expressly obliges the temporary work agency to inform the worker, before his or her assignment, of the occupational qualifications required and the specific features of the job to be filled.

The present paper also contains an assessment of the practical effects of the Directive. However, the statistical information available does not allow for a complete analysis, in particular due to the lack of data on work-related accidents and illnesses specifically for the categories of workers covered by the Directive. Available information seems however to confirm that fixed-term and temporary workers are still comparatively more exposed to occupational health and safety risks. A number of factors contribute to this outcome, including age, sectoral assignment and level of skills.

Most Member States comply with the Directive inasmuch as they have adopted provisions to the effect that their health and safety legislation applies to all workers regardless of the nature of their contract. Therefore, temporary and fixed-term workers are afforded the same legal rights as other workers. However, from the point of view of practical implementation of the Directive, it is questionable whether this legal solution has always been sufficient to afford workers the same level of protection regarding health and safety at the workplace. The replies given by stakeholders show different opinions on this matter both across Member States and across social partners. Trade unions tend to be more critical of the transposition in many Member States, particularly on the aspects of missing information and unclear responsibilities.

It also appears that the information given by public bodies on occupational health and safety does not sufficiently address the peculiar situation of temporary and fixed-term workers.

Finally, there does not seem to be widespread worry about excessive administrative burdens caused by the application of the information obligations provided for in Articles 6 and 7 of the Directive.

In view of the results presented here, the Commission services will give particular attention to the problems identified, and will pursue any cases or complaints that may be addressed to

them, by the legal means put at their disposal, in order to ensure full implementation of the Directive across all Member States.

Furthermore, they will continue to pursue the objective of creating favourable conditions for improving the health and safety of fixed-term and temporary workers by means of:

– enforcement of the Community *'acquis'* on occupational health and safety, applying to all workers regardless of their type of contract;

– implementation of the Community Strategy on Health and Safety, 2007-2012;

– development of analytical tools and policies focused on the particular situation of such workers in the context of the future EU Strategy on Occupational Health and Safety;

– detailed analysis of the transposition across all Member States of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, particularly as regards those provisions that may have an impact on the prevention of health and safety risks (access to training, information requirements).