EUROPEAN PARLIAMENT

1999 *2004*

Session document

FINAL
A5-0356/2002

23 October 2002

***I
REPORT

on the proposal for a European Parliament and Council directive on working conditions for temporary workers
(COM(2002) 149 – C5-0140/2002 – 2002/0072(COD))

Committee on Employment and Social Affairs

Rapporteur: Ieke van den Burg

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 21 March 2002 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 137(2) of the EC Treaty, the proposal for a European Parliament and Council directive on working conditions for temporary workers (COM(2002) 149 – 2002/0072 (COD)).

At the sitting of 8 April 2002 the President of Parliament announced that he referred this proposal to the Committee on Employment and Social Affairs as the committee responsible and the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Economic and Monetary Affaris, the Committee on Legal Affairs and the Internal Market and the Committee on Women's Rights and Equal Opportunities for their opinions (C5-0140/2002).

The Committee on Employment and Social Affairs appointed Ieke van den Burg rapporteur at its meeting of 23 April 2002.

It considered the Commission proposal and draft report at its meetings of 28 May 2002, 19 June 2002, 10 September, 30 September 2002 and 21 October 2002.

At the last meeting it adopted the draft legislative resolution by 30 votes to 13, with 1 abstention.

The following were present for the vote: Theodorus J.J. Bouwman, chairman; Marie-Hélène Gillig, vice-chairperson; Winfried Menrad, vice-chairman; Marie-Thérèse Hermange, vice-chairperson; Ieke van den Burg, rapporteur; Sylviane H. Ainardi, Jan Andersson, Elspeth Attwooll, Regina Bastos, Philip Bushill-Matthews, Chantal Cauquil (for Ilda Figueiredo), Alejandro Cercas, Luigi Cocilovo, Brian Crowley (for Nello Musumeci), Proinsias De Rossa, Harald Ettl, Jillian Evans, Carlo Fatuzzo, Fiorella Ghilardotti (for Enrico Boselli), Anne-Karin Glase, Lisbeth Grönfeldt Bergman (for Enrico Ferri), Roger Helmer, Anne Elisabet Jensen (for Daniel Ducarme), Karin Jöns, Anna Karamanou, Ioannis Koukiadis (for Elisa Maria Damião), Rodi Kratsa-Tsagaropoulou, Arlette Laguiller, Elizabeth Lynne, Toine Manders (for Marco Formentini), Thomas Mann, Mario Mantovani, Franco Marini (for James L.C. Provan, pursuant to Rule 153(2)), Claude Moraes, Ria G.H.C. Oomen-Ruijten (for Raffaele Lombardo), Bartho Pronk, Lennart Sacrédeus, Herman Schmid, Peter William Skinner (for Stephen Hughes), Miet Smet, Bruno Trentin (for Helle Thorning-Schmidt), Anne E.M. Van Lancker, Barbara Weiler, Sabine Zissener (for Mario Clemente Mastella).

The opinions of the Committee on Legal Affairs and the Internal Market and the Committee on Women's Rights and Equal Opportunities are attached; the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the Committee on Economic and Monetary Affairs decided on 14 May 2002 and on 13 May 2002 not to deliver opinions.

The report was tabled on 23 October 2002.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council directive on working conditions for temporary workers (COM(2002) 149 – C5-0140/2002 – 2002/0072(COD))

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2002) 149[1]),

– having regard to Article 251(2) Article 137(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0140/2002),

– having regard to Rule 67 of its Rules of Procedure,

– having regard to the report of the Committee on Employment and Social Affairs and the opinions of the Committee on Legal Affairs and the Internal Market and the Committee on Women's Rights and Equal Opportunities (A5-0356/2002),

1. Approves the Commission proposal as amended;

2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission	Amendments by Parliament
Amendment 1 Title	
Proposal for a Directive of the European Parliament and the Council on ***working conditions for temporary workers***	Proposal for a Directive of the European Parliament and the Council on ***temporary agency work***
	Justification
	Firstly, the aims and content of the Directive are broader than just "working conditions", extending to cover the promotion and regulation of the temporary work agency sector. Secondly, it is more consistent with the titles of the previous Directives on part-time work and fixed-term work. Finally, the term "temporary workers" risks confusion between temporary agency workers and other temporary workers such as those on a fixed-term contract (see also

[1] OJ C 203 E, 27.8.2002, p. 1

amendments to Article 3).

Amendment 2
Recital 1 a (new)

Article 21(1) of the Charter of Fundamental Rights of the European Union prohibits discrimination based on any ground, including sex. Article 23 of the Charter of Fundamental Rights of the European Union stipulates that equality between men and women must be ensured in all areas, including employment, work and pay. Article 141 of the EC Treaty establishes the legal basis for prohibiting discrimination between men and women for work of equal value. Furthermore, Articles 2 and 3(2) of that Treaty stipulate respectively that promoting equality between men and women and eliminating all inequalities between men and women are goals of the Community.

Justification

Articles 2 and 3 of the Treaty should be included among the references for policies and actions by the European Union to promote equality between men and women.

Amendment 3
Recital 2 a (new)

This directive builds on the Private Employment Agencies Convention (C181) and Recommendation (R188) adopted by the International Labour Conference in 1997 with the full support of the Employers' and Workers' Groups and EU Member State governments; these ILO instruments constituted a major step forward in the recognition of the positive role that private temporary work agencies may play in a well-functioning labour market whilst taking account of the need to protect workers from abuse.

Justification

These ILO instruments are major reference points for the Member States (who have ratified them or are in the process of doing so) and thus should be referred to in this proposal for a Directive and be taken into account in the drafting.

Amendment 4
Recital 4

In accordance with the European Social Agenda, which, on the basis of the communication from the Commission, was adopted by the European Council in Nice of 7, 8 and 9 December 2000, with the conclusions of the European Council in Stockholm of 23 and 24 March 2000 and with the Council Decision of 19 January 2001 on the 2001 employment guidelines, a satisfactory and flexible work organisation system has to be put in place, ***with new flexible contracts*** offering workers a fair degree of job security and enhanced occupational status, ***which, at the same time, is compatible with*** the workers' aspirations and undertakings' needs.	In accordance with the European Social Agenda, which, on the basis of the communication from the Commission, was adopted by the European Council in Nice of 7, 8 and 9 December 2000, with the conclusions of the European Council in Stockholm of 23 and 24 March 2000 and with the Council Decision of 19 January 2001 on the 2001 employment guidelines, a satisfactory and flexible work organisation system has to be put in place, ***in particular through new forms of regulated flexibility*** offering workers a fair degree of job security and enhanced occupational status, ***while, at the same time, ensuring that*** workers' aspirations and undertakings' needs ***are compatible***.

Justification

New forms of regulated flexibility do not necessarily coincide with new flexible contracts.

Amendment 5
Recital 4 a (new)

	On 29 June 1990, the Commission proposed a set of three draft Directives on atypical work underpinned by different legal bases. Only the proposal relating to health and safety was adopted, becoming Directive 91/383/EEC of 25 June 1991, as the Council could not reach consensus on the other proposals. For its part, the European Parliament adopted several elaborate and detailed resolutions on the subject of atypical work.

Justification

It is strange that the Commission choses to describe the history of the atypical work dossiers as starting only in 1995. This amendment fills in the background of activities during the early 1990's and notes the significant and comprehensive work of the European Parliament at that time.

Amendment 6
Recital 7

In the introduction to the framework agreement on fixed-term work concluded on 18 March 1999, the signatories had indicated their intention to consider the need for a similar agreement on temporary work.	In the introduction to the framework agreement on fixed-term work concluded on 18 March 1999, the signatories had indicated their intention to consider the need for a similar agreement on temporary ***agency*** work ***and not yet deal with temporary agency workers in the Fixed-Term Work directive. The exclusion from that Directive of fixed-term workers assigned by a temporary work agency to a user undertaking may be lifted on adoption of this new directive. Nevertheless, it should be ensured that when a temporary work agency, in line with the new directive, treats its temporary agency workers differently due to differences between user undertakings' conditions, that this constitutes an objective reason for such different treatment and therefore does not contravene other national and Community anti-discrimination provisions.***

Justification

This amendment clarifies the way the new Directive should inter-relate with the Fixed-Term Work Directive and pre-empts any perception of conflict between the new Directive and other non-discrimination provisions.

Amendment 7
Recital 9 a (new)

	The European level social partner organisations covering the temporary work agency sector, Euro-CIETT and Uni-Europa, in their Joint Declaration concluded and published in October 2001, asked for a framework directive and gave as their view that the Directive should have the fundamental aim of reaching a fair balance between the protection of temporary agency workers and enhancing the positive role that temporary work agencies may play in the European labour market.

Justification

Since the sectoral organisations of employers and workers in the temporary work agency sector have always been particularly involved and interested in the development of the Directive, it is important to refer to their joint declaration which outlines the major elements of what they believe the Directive should comprise.

Amendment 8
Recital 11

Temporary work should meet undertakings' needs for flexibility and employees' need to reconcile their working and private lives ***and contribute to*** job creation ***and*** participation and integration in the labour market.	Temporary ***agency*** work should ***promote the European Union's economic, social and employment objectives by helping to*** meet undertakings' needs for flexibility and employees' need to reconcile their working and private lives***. Temporary agency work should also promote*** job creation***,*** participation and integration in the labour market ***both by providing opportunities for training and professional experience and by supporting user undertakings, especially small and medium-sized undertakings, with a view to increasing permanent job opportunities, particularly for women***.

Justification

The potential and real advantages of a healthy temporary work agency sector should be

mentioned in greater detail.

Amendment 9
Recital 12 a (new)

The triangular character of temporary agency work should be taken into account and may lead to the need for specific measures and regulations to safeguard the overall and proper functioning of the labour market. Such measures might, for instance, ensure that temporary work agencies' activities are not to the detriment of systems and traditions of industrial relations in the user undertakings and sectors, including in circumstances of industrial conflict.

Justification

This amendment would give due emphasis to the measures that may need to be taken to ensure that the activities of temporary work agencies do not cut across existing standards and industrial relations benefitting workers in the user companies/sectors.

Amendment 10
Recital 12 b (new)

Notwithstanding that social security protection is not an explicit part of the provisions of this Directive, it should be recalled that social protection systems should be made capable of adaptation to new patterns of work and to provide adequate protection to those engaged in such work. In particular, attention should be given to the problems that arise for temporary agency workers as a result, for example, of the impact of broken work histories, multiple employment situations and short contracts on the continuity of employment rights.

Justification

This issue has been raised several times in recent years by the European social partners, including in their framework agreement on fixed-term work. The Commission is also showing itself to be more willing to look at this question. Therefore, although not covered in this Directive as such, it is relevant to reiterate here that social protection systems must become more adaptable to new forms of work.

Amendment 11
Recital 14

Directive 91/383/EEC of 25 June 1991[1] 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 establishes the safety and health provisions applicable to temporary workers.	Directive 91/383/EEC of 25 June 1991[2] 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 establishes the safety and health provisions applicable to temporary ***agency*** workers. ***However, some room for improvement has been identified, in particular to better specify the responsibilities of the temporary work agency and the user undertaking as regards training.***

Justification

The Directive on health and safety at work for temporary agency workers does not properly specify the respective responsibilities of the agency and user company as regards training; the resultant problems and high level of health and safety incidents amongst temporary agency workers were identified in the Dublin Foundation's recent report on 'Temporary agency work in the EU' (p.68).

Amendment 12
Recital 14 a (new)

	As stressed by the European-level social partners in the context of the Directives on part-time and fixed-term contract

[1] OJ L 206 of 29.7.1991, p. 19.
[2] OJ L 206 of 29.7.1991, p. 19.

work, as well as in the Joint Declaration of the sectoral social partners, Euro-CIETT and Uni-Europa, direct employment contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and workers.

Justification

The Directive should recognise, as do other such initiatives, the importance of direct and open-ended employment contracts as a kind of benchmark in the labour market.

Amendment 13
Recital 14 b (new)

In the context of social dialogue as an objective of the Community and the Member States (Article 136 TEC), the further development of social dialogue in the temporary work agency sector and the conclusion of collective agreements with respect to temporary agency work should be encouraged and stimulated, including with a view to improving the acceptance of temporary agency work throughout the European Union.

Justification

The social dialogue should be explicitly referred to, both as a Community objective and as a tool for the regulation of temporary agency work and its proper recognition as a legitimate part of the labour market.

Amendment 14
Recital 14 c (new)

Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breast-feeding and equal

	treatment in statutory and occupational social security schemes applies to all employees. The Charter of Fundamental Rights enshrines respect for the entitlement to social security benefits, including childcare facilities, and social security provision for maternity, illness or industrial accident. Furthermore, Article 33(2) of the Charter stipulates that, in order to reconcile family and professional life, everyone has the right to protection from dismissal and the right to paid maternity leave or parental leave following the birth or adoption of a child. In particular, the amendment of Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, prohibits any discrimination on the grounds of sex, including sexual harassment, and enshrines the right to maternity, paternity and parental leave.

Justification

It seems necessary to mention the amendment of Directive 76/207/EEC, under which the principle of non-discrimination on grounds of sex at the workplace is extended to include protection against direct and indirect discrimination, harassment and sexual harassment and protection of the right to maternity, paternity and parental leave (aimed at reconciling family and professional life) and provides for the promotion of positive actions and for enterprises to be asked to draw up plans to promote equality.

Amendment 15
Recital 15

With respect to basic working and employment conditions, temporary workers should ***not*** be ***treated any less favourably than a "comparable worker", i.e. a worker in*** the user undertaking ***in an identical or similar job,*** taking into account ***seniority,*** qualifications and skills.	***The*** basic working and employment conditions ***applicable to*** temporary ***agency*** workers should be ***at least those that would apply to temporary workers directly employed by*** the user undertaking ***for the same duration to perform the same or similar work***, taking into account qualifications and skills.

Justification

To make the Recital consistent with the amendment made to Article 5.1.

Amendment 16
Recital 16

However, differences in treatment are acceptable if they are objectively and reasonably justified by a legitimate aim under national law.	However, differences in treatment are acceptable if they are objectively and reasonably justified by a legitimate aim under national law. ***They must be compatible with the Charter of Fundamental Rights and with the EU Treaties, regulations and all directives governing the principle of non-discrimination.***

Justification

It is important to include reference to the various European regulations and directives which enshrine and regulate the principle of non-discrimination in general terms.

Amendment 17
Recital 17

In the case of workers who have a permanent contract with their temporary agency, and in view of the special protection such a contract offers, provision should be made to permit exemptions from the rules applicable in the user undertaking.	In the case of workers who have a permanent contract ***or a contract of at least 18 months*** with their temporary ***work*** agency, and in view of the special protection such a contract offers, provision should be made to permit exemptions from the rules applicable in the user undertaking. ***The contract should offer the temporary agency worker the protection normally afforded, according to national law and practice, by permanent contracts or contracts of similar duration entered into by other categories of worker.***

Justification

In addition to the amendment to Article 5.2., it should be clear that the contract should really be a full fledged employment contract with all the normal labour law and social security rights linked to it.

Amendment 18
Recital 18

In view of the need to maintain a certain degree of flexibility in the working relationship, ***provision*** should be made for the ***Member States*** to be able to ***delegate to the social partners the task of defining*** basic working and employment conditions ***tailored to the specific characteristics of certain types of employment or certain branches of economic activity***.	***Provision*** should be made for the ***social partners*** to be able***, at an appropriate level and in accordance with national legislation and practice,*** to ***negotiate and define*** basic working and employment conditions ***for temporary agency workers to apply in the event of a departure from the principle of non-discrimination***.

Justification

This directive should not restrict the ability of employers and employees to act independently but should encourage it along with good industrial relations in accordance with the provisions of the Treaty.

Amendment 19
Recital 19

There should be some flexibility in the application of the principle of non-discrimination in cases of missions effected to accomplish a job which, due to its nature or duration, lasts less than six weeks.	***Deleted***

Justification

In the line with the deletion of Article 5.4.

Amendment 20
Recital 20

An improvement in the minimum protection for temporary workers occasioned by this Directive will enable any restrictions ***or*** prohibitions which may have been imposed on temporary work to be reviewed and, if necessary, lifted if they are no longer justified on grounds of the general interest ***regarding, in particular the protection of workers.***	An improvement in the minimum protection for temporary ***agency*** workers occasioned by this Directive will enable any restrictions***,*** prohibitions ***or specific administrative provisions*** which may have been imposed on temporary ***agency*** work to be reviewed and, if necessary, lifted if they are no longer justified***. They can only be justified*** on grounds of the general interest ***e.g. health and safety, other risks to particular groups or sectors, labour market functioning and the need to prevent abuse.***

Justification

To bring this Recital into line with changes made to Article 4.

Amendment 21
Recital 21

There must be an effective means of safeguarding temporary workers' rights.	There must be an effective means of safeguarding temporary ***agency*** workers' rights. ***In addition to being fully covered by national and Community provisions for information, consultation and participation of employees, in both temporary work agencies and user undertakings, this means temporary agency workers should have access to internal procedures and provisions for complaints in the user undertaking.***

Justification

This amendment brings the Recital into line with amendments made to Article 7.

Amendment 22
Recital 22

In compliance with the principle of	In compliance with the principle of

subsidiarity and the principle of proportionality under Article 5 of the Treaty, the aims of the action envisaged above cannot be achieved satisfactorily by the Member States, since the goal is to establish a harmonised Community-level framework of protection for temporary workers; owing to the scale and the impact of the action planned, these objectives can best be met at Community level by introducing minimum requirements applicable throughout the European Community; this directive confines itself to what is required for achieving these objectives,	subsidiarity and the principle of proportionality under Article 5 of the Treaty, the aims of the action envisaged above cannot be achieved satisfactorily by the Member States, since the goal is to establish a harmonised Community-level framework of protection for temporary ***agency*** workers; owing to the scale and the impact of the action planned, these objectives can best be met at Community level by introducing minimum requirements applicable throughout the European Community ***to provide for a common framework for Member States that may facilitate the integration of European labour markets and cross-border labour mobility particularly in border regions***; this directive confines itself to what is required for achieving these objectives,

Justification

To strengthen the explanation of how the Directive is consistent with the principle of subsidiarity and why such action is needed at EU level.

Amendment 23
Article 1.1.

1. This directive applies to ***the contract of employment or employment relationship between a temporary agency, which is the employer, and the worker, who is posted to a user undertaking to work under its supervision.***	This directive applies to ***all situations in which, on the basis of an employment contract or employment relationship between the temporary work agency and the temporary agency worker, an agency assigns a worker to work under the direction and supervision of a user undertaking.***

Justification

To better reflect that the Directive deals with the triangular relationship inherent to temporary agency work and not only with the relationship between the agency and the worker. The expression "direction and supervision", drawn from the Posting of Workers Directive, is intended to express a relationship of authority-dependency.

Amendment 24
Article 1.2.

2. This directive applies to public and private undertakings engaged in economic activities whether or not they are operating for gain.	2. This directive applies to public and private undertakings ***that are*** engaged in economic activities ***and that are operating as temporary work agencies,*** whether or not they are operating for gain. ***This directive also applies to public and private user undertakings whether or not they are engaged in economic activities and whether or not they are operating for gain.*** ***Where customary in national law and practice, Member States may exempt from the provisions in Article 5 of this Directive specific public and private undertakings engaged in non-profit-making economic activities.***

Justification

This aims to put beyond doubt that all organisations operating as temporary work agencies and all users of temporary agency workers are to be covered by the directive, including e.g. public administrations and voluntary/charitable organisations. The last paragraph makes it possible for Member States to exempt certain non-profit-making organisations from the provisions of Article 5, where such exemptions would reflect existing law and practice.

Amendment 25
Article 1.3

Member States may, after consulting the social partners, provide that this directive does not apply to employment contracts or relationships concluded under a specific public or publicly supported training, integration or vocational retraining programme.	Member States may, after consulting the social partners, provide that this directive does not apply to employment contracts or relationships concluded under ***a specific training programme or*** a specific public or publicly supported integration or vocational retraining programme.

Justification

It needs to be made clear that trainees in general should not fall within the scope of the directive. For instance, there are special training support programmes geared to integrating problem groups into the labour market, under which a training group concludes a contract with a trainee. The latter then receives his/her training in a member firm on different terms

from those applicable to a trainee employed directly in that firm. Such programmes are purely private initiatives, and would be at serious risk if the proposed directive were to apply to them.

Amendment 26
Article 2

The purpose of this Directive is:	The purpose of this Directive is:
a) to improve the quality of temporary work by ensuring that the principle of non-discrimination is applied to temporary workers*;*	a) ***to provide for the protection of temporary agency workers and*** to improve the ***appeal and*** quality of temporary ***agency*** work by ***recognising temporary agency workers as workers of the agency, adequately covered by statutory employment rights and social protection, and by*** ensuring that the principle of non-discrimination is applied to temporary ***agency*** workers*;*
b) to establish a suitable framework for the use of temporary work to contribute to the smooth functioning of the labour and employment market.	b) to establish a suitable framework for the ***development and*** use of ***the*** temporary ***agency*** work ***sector in order*** to contribute to ***job creation and*** the smooth functioning of the labour and employment market ***by providing user undertakings in a flexible manner with temporary human resources without detrimental effects on existing permanent workforces;***
	c) to recognise temporary work agencies as employers, taking into account their triangular relationships with temporary agency workers and user undertakings, while ensuring respect for the principle of non-discrimination and thereby for the established working conditions in user undertakings and sectors.

Justification

This amendment makes explicit some of the balanced aims of the Directive, in particular in respect of protecting temporary agency workers and the interests of existing permanent workforces, while promoting the development of the sector and thereby job creation.

New wording is also added in the first part to reflect the provisions of the new Article that has been inserted before Article 5, setting out the need for changes so that temporary agency workers enjoy basic statutory employment right and social protection.

A further change is to insert a third objective of the Directive which is to recognise the legitimacy of temporary work agencies whilst ensuring that their activities do not compromise existing standards in user companies and sectors.

Amendment 27
Article 3.1. aa) (new)

	aa) "temporary agency worker" means any person who enters into a contract of employment or employment relationship of indefinite or fixed duration with a temporary work agency, to be assigned temporarily in a user undertaking to work under the direction and supervision of that user undertaking;

Justification

It seems inappropriate to leave a Directive on temporary agency work without a definition of a temporary agency worker. The formulation "direction and supervision" relates to the amendment made to Article 1.1, drawing on the Posting of Workers Direcitve.

Amendment 28
Article 3.1. b)

b) "comparable worker" means a worker in the user undertaking occupying an identical or similar post to that occupied by the worker posted by the temporary agency, account being taken of seniority, qualifications and skills.	***Deleted***

Justification

This amendment is consequential on the re-formulation of Article 5.1.

Amendment 29
Article 3.1. c)

c) ***"posting"*** means the period during which the temporary worker is ***placed at*** the user undertaking;	c) "***assignment***" means the period during which the temporary ***agency*** worker is ***assigned to work under the direction and***

supervision of the user undertaking;

Justification

"Assignment" is preferred here and throughout the Directive to the term "posting" in order to avoid any confusion with the Posting of Workers Directive (which covers a broader category of workers than just temporary agency workers). The second change is for consistency with other amendments.

Amendment 30
Article 3.1. ca) (new)

ca) "temporary work agency" means any natural or legal person entering into employment contracts or employment relationships with temporary agency workers with a view to assigning them to work temporarily under the direction and supervision of user undertakings;

Justification

It seems inappropriate to leave a Directive on temporary agency work without a definition of a temporary work agency.

Amendment 31
Article 3.1. cb) (new)

cb)"user undertaking" means any natural or legal person to whom and under whose direction and supervision temporary agency workers are assigned to work temporarily;

Justification

For completeness, given how critical the term is to the previous definitions, it seems appropriate to have a definition of "user undertaking".

Amendment 32
Article 3.1. d)

d) "basic working and employment conditions": working and employment conditions relating to:	d) "basic working and employment conditions": working and employment conditions***, as set out in legislation, collective agreements and other company-related provisions,*** relating to:
i) ***the duration of*** working time, rest periods, ***night work, paid holidays and public holidays***;	***(***i) working time ***and*** rest periods;
ii) ***pay***;	***(***ii) ***paid holidays;***
iii) ***work done by pregnant women and nursing mothers, children and young people;***	***(***iii) ***pay, including overtime pay;***
iv) ***action taken to combat discrimination on the grounds of sex, race or ethnic origin, religion or beliefs, disabilities, age or sexual orientation.***	**(**iv) ***health, safety and hygiene at work;***
	(v) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people, as well as provisions relating to parental leave;
	(vi) equality of treatment between men and women and action taken to combat discrimination and harrassment on the grounds of sex, race or ethnic origin, religion or beliefs, disabilities, age or sexual orientation.

Justification

The amendment draws on the terms for basic employment and working conditions used in the Posting of Workers Directive Article 3.1., adapted here to be in line with the structure of Article 5, the latter being similar to the Part-Time and Fixed-Term Work Directive which do not contain such a general definition. Other changes make it clear that the conditions referred to are those derived from legislation, collective agreements or other workplace provisions, as well as making explicit references to parental leave provisions and action to combat harrassment.

Amendment 33
Article 3.2. c)

c) persons ***on a posting at a user undertaking***.	c) persons ***with an employment contract or an employment relationship with a temporary work agency***.

Justification

This is to broaden the group of workers that "Member States shall not exclude from the scope of this Directive", in particular by not restricting the provision to workers on a posting. This is partly because "assignment" should be used instead of "posting"; but a further reason for the change is so as not to exclude workers who work in a user undertaking under a leasing or other (often longer-term but nevertheless 'temporary') arrangement involving a temporary work agency.

Amendment 34
Article 4

1. Member States, after consulting the social partners in accordance with legislation, collective agreements and national practices, ***shall review periodically any restrictions or prohibitions on temporary work for certain groups of workers or sectors of economic activity*** in order to verify whether the specific conditions underlying them still obtain. If they do not, the Member States should discontinue them.	1. Member States, after consulting the social partners in accordance with legislation, collective agreements and national practices, ***may, where justified, prohibit or restrict temporary agency work. Where national practice makes it more appropriate, Member States may give the social partners at the appropriate level the option of doing so directly.***
	1a (new) Member States shall, within two years of the adoption of this directive and every 5 years thereafter, after consulting the social partners in accordance with legislation, collective agreements and national practices, review all existing restrictions, prohibitions and specific administrative provisions on temporary agency work, in order to verify whether the specific conditions underlying them still obtain. If they do not, the Member States should discontinue them.
2. The Member States shall notify the Commission of the result of said review. If the restrictions or prohibitions are maintained, the Member States shall inform	2. The Member States shall notify the Commission of the result of said review. If the restrictions or prohibitions are maintained, the Member States shall inform

the Commission why they consider that they are necessary and justified.	the Commission why they consider that they are necessary and justified.
The restrictions or prohibitions which could be maintained shall be justified on grounds of the general interest regarding, in particular, the protection of workers.	The restrictions or prohibitions which could be maintained shall ***only*** be justified on grounds of the general interest regarding, in particular, the protection of ***temporary agency*** workers***, the health and safety and other risks posed to certain groups of workers or sectors of economic activity, the proper functioning of the labour market and the need to prevent potential abuses***.

Justification

The first change is to split the existing paragraph 1 into two parts: the first puts beyond doubt that restrictions and prohibitions on the use of temporary agency work can be maintained and/or introduced in certain circumstances (in line with ILO Convention 181 Article 4); the second strengthens the provision for Member States' reviews of such restrictions, prohibitions and specific administrative provisions, including by inserting a deadline for the first such review and timing for subsequent reviews.

The second part of paragraph 2 is amended to make more explicit the only possible justifications for restrictions or prohibitions to be maintained and/or introduced: the text echoes the three objectives of the Directive (see amendment to Article 2) as well as, in the last part, drawing on the Joint CIETT-UNI-Europa Declaration.

Amendment 35
Article 4.3. (new)

	3. This provision is without prejudice to reasonable arrangements for the registration, licensing, certification, guaranteeing or monitoring of temporary agency work, as long as they do not place disproportionate administrative burdens on the undertakings and persons involved.

Justification

This provision puts beyond doubt that reasonable administrative arrangements for the registration and monitoring of temporary work agencies will not be considered as restrictions or prohibitions.

Amendment 36
Article 4.4. (new)

4. Restrictions or prohibitions shall be maintained or, where necessary, introduced, to prevent temporary agency workers being assigned to user undertakings or sectors where workers are engaged in collective action.

Justification

This provision would ensure temporary agency workers were not used to e.g.break a strike. As such, it is in line with the ILO provisions and was part of the consensus that existed during the social partner negotiations on temporary agency work in 2000-01.

Amendment 37
New Article before Article 5

Member States shall ensure that temporary agency workers are not treated less favourably with regard to basic statutory employment rights and social protection than other categories of worker.

Member States shall, within two years of the adoption of the directive and after consultation with the social partners, review existing labour and social legislation, collective agreements and national practices, in order to verify if temporary agency workers are adequately covered.

Member States shall, after consultation with the social partners, clarify the legal status of temporary agency workers with a view to recognising them as employees of temporary work agencies and to ensuring and, where necessary extending, the scope of labour legislation and social protection to cover them.

Member States shall determine and allocate, in accordance with Community and national law and practice, the

	respective responsibilities of temporary work agencies and user undertakings with regard to the rights and obligations covered by this provision.

Justification

This is designed to require Member States to review and where necessary improve temporary agency workers' basic employment rights as a somewhat separate issue from the non-discrimination and other provisions in the Directive.

Amendment 38
Article 5.1.

Temporary workers during their posting, shall receive at least as favourable treatment, in terms of basic working and employment conditions, including seniority in the job, as a comparable worker in the user enterprise, unless the difference in treatment is justified by objective reasons.Where appropriate, the *pro rata temporis* principle applies.	***The basic working and employment conditions applicable to a temporary agency worker shall be at least those which apply or would apply to a worker directly employed by the user undertaking on a contract for the same duration, performing the same or similar tasks, taking into account qualifications and skills***, unless the difference in treatment is justified by objective reasons.Where appropriate, the pro rata temporis principle applies.

Justification

This re-formulation makes it clear that temporary agency workers' conditions are to be at least equivalent to those that would be enjoyed by workers directly employed by the user undertaking for the same duration (regardless of the type of contract and - because of "would" - whether or not such workers actually exist in the particular user undertaking).

Amendment 39
Article 5.1 a (new)

	Basic protection as regards essential working conditions and employment protection which is mainly of interest to women and employees with family responsibilities, as well as protection

	against discrimination and intimidation, maternity protection and maternity and parental leave, must be available from day one for all temporary agency workers, whatever type of contract they have.

Justification

In order to ensure equal treatment for all employees in the same workplace and to provide proper protection for temporary agency workers, appropriate basic protection must be offered from day one of the employment contract, inter alia as regards parental leave and discrimination.

Amendment 40
Article 5.2.

Member States may provide that an exemption be made to the principle established in paragraph 1 when temporary workers ***who*** have a ***permanent*** contract of employment with a temporary agency ***continue to be paid in the time between postings***.	***With regard to pay or specific pay elements,*** Member States may***, where appropriate after consultation of the social partners,*** provide that an exemption be made to the principle established in paragraph 1, when temporary ***agency*** workers have a permanent contract of employment ***or a contract of employment of at least 18 months*** with a temporary ***work*** agency ***that guarantees them adequate and continuous payment whether or not they are on an assignment.*** ***Member States shall take appropriate measures with a view to preventing misuse in the application of this paragraph.***

Justification

The exemption for permanent employment contracts should be restricted to only pay or specific pay elements to avoid major discrepancies with workers in the user undertaking. The description of the continuation of payment between assignments should be more precise.

This amendment recognises that non-permanent contracts of a certain duration provide similar stability of income etc to permanent contracts.

The amendment to Recital 17 is also relevant here.

Amendment 41
Article 5.3

Member States may give the social partners at the appropriate level ***the option of concluding*** collective agreements which derogate from the principle established in paragraph 1 ***as long as an adequate level of protection is provided for temporary workers.***	***The social partners may*** at the appropriate level ***continue with or conclude*** collective agreements which derogate from the principle established in paragraph 1.

Justification

The possibility of the social partners concluding agreements which depart from the principle of non-discrimination should not require the Member States' authorisation but should rather follow directly from the directive. To avoid interference with existing collective agreements which depart from the principle of non-discrimination, it should be possible to continue with them unchanged after the directive is adopted. Once the social partners have concluded such an agreement at the appropriate level, neither of the parties should be able to create uncertainty about the agreement by appealing to the Court of Justice to set aside the agreement on grounds of inadequate protection.

Amendment 42
Article 5.4

Without prejudice to the provisions of paragraphs 2 and 3 above, Member States may provide that paragraph 1 shall not apply where a temporary worker works on an assignment or series of assignments with the same user enterprise in a post which, due to its duration or nature, can be accomplished in a period not exceeding six weeks. Member States shall take appropriate measures with a view to preventing misuse in the application of this paragraph.	***Deleted***

Justification

Given the comparison with temporary workers employed directly by the user undertaking, this exemption is not justified because the principle of non-discrimination must be guaranteed for work of equal duration from the first day of the work relationship and throughout its duration.

Amendment 43
Article 5.5.

When this directive calls for a comparison to be made with a comparable worker in the user undertaking but no such worker exists, reference shall be made to the collective agreement applicable in the user undertaking; if no such collective agreement exists, the comparison will be made by reference to the collective agreement applicable to the temporary work agency; if no collective agreement is applicable, the basic working and employment conditions of temporary workers will be determined by national legislation and practices.	***Deleted***

Justification

This deletion is consequential on the deletion of the "comparable worker" definition in Article 3.1.b .

Amendment 44
Article 5.6

The implementing procedures for this Article shall be defined by the Member States ***after consultation of the social partners.*** The Member States may also entrust the social partners at the appropriate level with the task of defining these procedures for this chapter by means of a negotiated agreement.	The implementing procedures for this Article shall be defined by the Member States. The Member States may also entrust the social partners at the appropriate level with the task of defining these procedures for this chapter by means of a negotiated agreement ***in accordance with national practices***.

Justification

The importance of differing national practices in differing Member States should be explicitly recognised.

Amendment 45
Article 5.6. a (new)

The same provisions as regards safety, health, hygiene and occupational health shall apply to workers on assignments as to workers in the user undertaking. Special attention shall be paid to training assigned workers in safety matters, given the temporary nature of their work and the fact that they may carry out different types of work in the various user enterprises.

Justification

Reasons stemming from equal treatment and equal rights for all those working in the undertaking and particular consideration for the temporary nature of the work, which is frequently of very short duration, as well as the fact that, in many cases, temporary agency workers carry out different tasks in the various user enterprises for which they work.

Amendment 46
Article 6.1.

Temporary workers shall be informed of any vacant posts in the user undertaking to give them the same opportunity as other workers in that undertaking to find permanent employment.	Temporary ***agency*** workers shall be informed of any vacant posts in the user undertaking to give them the same opportunity as other workers in that undertaking to find permanent employment. ***Such information may be provided via a general announcement in a suitable place in the undertaking to which a temporary agency worker is assigned.***

Justification

The additional text, drawn from the Fixed-Term Contracts Directive, is intended to make the text more 'operational'; it also indicates that user undertakings will need to be involved in complying with this provision.

Amendment 47
Article 6.2.

Member States shall take any action required to ensure that any clauses banning or having the effect of preventing the conclusion of a	Member States shall take any action required to ensure that any clauses banning or having the effect of preventing the conclusion of a

contract of employment or an employment relationship between the user undertaking and the temporary worker after his ***posting*** are null and void or may be declared null and void.	contract of employment or an employment relationship between the user undertaking and the temporary ***agency*** worker after his ***assignment*** are null and void or may be declared null and void. ***This paragraph is without prejudice to arrangements under which temporary work agencies receive a reasonable level of recompense for services rendered to the user undertaking in respect of the assignment, recruitment and training of temporary agency workers.***

Justification

This amendment aims to ensure that the practice of "temp-to-perm fees" in e.g. the UK is not affected by this Article.

Amendment 48
Article 6.3.

Temporary agencies shall not charge workers any fees in exchange for arranging ***for them to be recruited by a user undertaking.***	Temporary ***work*** agencies shall not charge workers any fees***, in particular*** in exchange for arranging ***assignments in the user undertakings or in case they enter into a contract of employment or an employment relationship with the user enterprise after their assignment in the respective user enterprise.***

Justification

Agency workers themselves should not be charged if they move on to the user enterprise they were assigned to.

Amendment 49
Article 6.4.

Temporary workers shall be given access to the ***social services*** of the user undertaking unless there are objective reasons against this.	Temporary ***agency*** workers shall be given ***the same*** access to the ***collective facilities*** of the user undertaking***, for example childcare facilities, as apply or would apply to workers directly employed by the user***

undertaking for the same duration unless there are objective reasons against this.

Justification

This amendment carries forward the re-formulation of Article 5.1 into Article 6.4. It also aims to make more explicit what services/facilities are covered by this provision.

Amendment 50
Article 7, new para before 1st para

Member States and social partners shall provide that temporary agency workers benefit in the same way as other workers from provisions in national and Community legislation for the information, consultation and participation of employees, in respect of both temporary work agencies and user undertakings. They shall also provide that temporary agency workers can be represented by the workers' representative body in the user undertaking and have access to any internal procedures and provisions for complaints, whether these are initiated by or against the temporary agency worker.

Justification

This new paragraph addresses the fact that the Commission's draft of Article 7 only provides for temporary agency workers to count in working out whether or not national and/or Community information, consultation and participation procedures are triggered as regards a particular company. The change would ensure they also benefit as other employees from the actual procedures where triggered and implemented - in other words, that they should be informed and consulted along with the rest of the workforce. Finally, it also addresses the fact that temporary agency workers are particularly vulnerable to unsubstantiated complaints from a user company, whilst also often being precluded from using internal procedures to initiate e.g. sexual harrassment complaints.

Amendment 51
Article 7

Temporary workers shall count for the purposes of calculating the threshold above which bodies representing workers provided	Temporary ***agency*** workers shall count for the purposes of calculating the threshold above which bodies representing workers

for under national and Community legislation should be formed at the temporary agency.	provided for under national and Community legislation ***or collective agreements*** should be formed at the temporary agency.
Member States may provide that, under conditions that they define, these workers count for the purposes of calculating the threshold above which bodies representing workers provided for by national and Community legislation should be formed in the user undertaking.	Member States may provide that, under conditions that they define, these workers count***, as do or would workers directly employed by the user undertaking for the same duration,*** for the purposes of calculating the threshold above which bodies representing workers provided for by national and Community legislation ***or collective agreements*** should be formed in the user undertaking.

Justification

The amendment takes account of the fact that workers' representation may also be determined by collective agreements. The longer addition to the second paragraph carries forward the re-formulation of Article 5.1 into Article 7.

Amendment 52
Article 10

Member States shall lay down rules on sanctions applicable in the event of infringements of national provisions enacted under this directive and shall take all necessary measures to ensure that they are applied. The penalties provided for must be effective proportionate and disuasive Member States shall notify these provisions to the Commission by the date given in Article 11 at the latest and any subsequent amendment within good time. They shall, in particular, ensure that workers and***/or*** their representatives have adequate means of enforcing the obligations under this directive.	Member States shall lay down rules on sanctions applicable in the event of infringements of national provisions enacted under this directive and shall take all necessary measures to ensure that they are applied. The penalties provided for must be effective proportionate and disuasive Member States shall notify these provisions to the Commission by the date given in Article 11 at the latest and any subsequent amendment within good time. They shall, in particular, ensure that workers and their representatives have adequate means of enforcing the obligations under this directive.

Justification

Member States should ensure that <u>both</u> workers <u>and</u> their representatives are equipped to press the provisions of the Directive in order that workers have an effective choice between acting directly or through their representatives.

Amendment 53
Article 11.1

The Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this directive by [two years after adoption] at the latest, or shall ensure that the social partners introduce the necessary provisions by the way of an agreement, whereby the Member States must make all the necessary arrangements to enable them to guarantee at any time that the objectives of this directive are being attained. They shall forthwith inform the Commission thereof.	The Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this directive by [two years after adoption] at the latest, or shall ensure that, ***where applicable in accordance with their national legislation or practices,*** the social partners introduce the necessary provisions by the way of an agreement, whereby the Member States must make all the necessary arrangements to enable them to guarantee at any time that the objectives of this directive are being attained. They shall forthwith inform the Commission thereof.

Justification

This Directive purports to make temporary agency work more attractive: the differing circumstances pertaining in each Member States should determine how the best implementation method to ensure this goal is achieved, and this provision should therefore allow a wide degree of flexibility in transposition.

Amendment 54
Article 11.3 (new)

	They should transpose these provisions in a manner consistent with promoting job creation and making temporary agency work more attractive, recognising the different circumstances pertaining to their own Member State.

Justification

Explicitly recognises the importance of national legislation and practices in the context of the overall objectives of the Directive.

EXPLANATORY STATEMENT

In preparing her draft report, the rapporteur has been in regular contact and has had in-depth discussions with the whole range of interested parties, both in public and private. In addition to working visits to the 'coal face' and talks with temporary agency workers and agency staff, this work has included:

- the seminar organised in the European Parliament by the European Policy Centre on 8 May 2002
- the ***mini-hearing*** organised by the rapporteur in Committee on 28 May with interventions from key social partner representatives and researcher Donald Storrie; this first discussion in Committee was supported by the rapporteur's ***first working document dated 14 May 2002 (PE 316.344)***
- a further exchange of views in Committee on 19 June and bilateral discussions with shadow rapporteurs and the draftspersons for the FEMM and JURI Committees, including on the basis of the rapporteur's ***second working document dated 27 June 2002 (PE 316.355)***
- contacts and discussions with interested parties including European, national and sectoral social partner organisations, but also with Member State representatives, the Commission, the Council secretariat and the Danish Presidency.

These preparations have fed into the rapporteur's draft report, which covers a considerable number of amendments. The rapporteur wouuld like to underline, however, that this in no way means that the main line and the core message set out in the Commission's proposal are not followed. She is still fully convinced of the need and importance of the Directive but, over recent weeks, has become all the more convinced of the complexity of the issue.

The main reasons for changes

The reasons for the number of amendments (of which many are rather technical in nature) are:

- to formulate more clearly the aims and objectives of the Directive on the basis of the threefold approach set out in the rapporteur's first working document, inspired *inter alia* by the Dublin Foundation's report[1] and other studies
- to build more precisely on what was discussed in the social partners' negotiations, as well as on existing European and ILO instruments, in order to facilitate the consistent interpretation and implementation of the new Directive
- to focus on and prioritise basic protection for temporary agency workers as a separate, but no less important, issue from the provision not to treat a temporary agency worker less favourably than a comparable worker in the user company as regards working and employment conditions (the 'non-discrimination provision')

- to take account of the different situations that exist in Member States, particularly with respect to the need for possible exemptions from the non-discrimination provision.

[1] "Temporary agency work in the EU" published by the Dublin Foundation in April 2002 (www.eurofound.eu.int/working/working.htm)

The threefold objectives

There was broad support in the various discussions in and outside Committee for the three objectives or levels of equal treatment that were identified in the first working document:

- "*equal treatment for agency workers compared with other workers as regards employment status and security*
- *respect for established social standards in user firms through equal treatment as regards pay and conditions between agency workers and comparable workers in user firms*
- *recognition of the temporary agency sector as legitimate and professional business by removing unnecessary restrictions and permits/bans.*"

The rapporteur proposes to reflect these in the recitals and the articles of the Directive, underlining the need for a delicate balance between them and for due attention to be paid to the triangular character of temporary agency work.

Without broadening the provisions to issues for which the EU is not competent or for which the legal basis and the decision-making procedures would have to be extended, her additions on basic statutory employment protection are intended to provide a more complete framework and a better balance in the provisions that are relevant for the different parties involved.

Building on existing regulatory texts and consensus

Unfortunately, the Commission has not taken every opportunity to build on existing regulatory texts and its references are therefore somewhat incomplete. The rapporteur has taken inspiration not only from the Directive based on the Fixed Term Work agreement concluded by the European social partners (99/70/TEC) (which in turn is based to a large extent on the Part Time Work Directive 97/81/TEC), but also from the Posting of Workers Directive (96/71/TEC) and the ILO Convention (C181) and Recommendation (R188) that were adopted in the tripartite International Labour Conference in 1997 with overwhelming support and consensus between the parties.

Like the Commission, the rapporteur regrets that the European social partners did not reach an agreement for a directive on temporary work agencies and also wishes to build on the consensus reached in the negotiations in the beginning of 2001. Furthermore, in October 2001, the European social partner organisations covering the temporary work agency sector, Euro-CIETT and Uni-Europa, concluded a Joint Declaration outlining the main elements of a proposal for a Directive that they would like to see the Commission present. Strangely, the Commission has not referred to that text. The rapporteur proposes such a reference and indeed has lifted several formulations in her amendments directly from this Joint Declaration.

Similar 'plagiarism' is committed in amending articles and terms proposed by the Commission that were close to, but somewhat different from, for instance, the provisions in the Fixed Term Work and Posting of Workers Directives or the ILO Convention. Such discrepancies in legal texts may cause a good deal of interpretative problems and barriers in implementation, application and jurisdiction. It therefore seems wise to bring definitions and obligations more into line.

With a similar concern, the rapporteur has also chosen to use the terms "temporary agency worker", "temporary work agency" and "user undertaking" throughout the Directive, based on clear definitions of these terms in Article 3 to avoid confusion. Furthermore, the term "posting" has been replaced by "assignment" to avoid confusion with the Posting of Workers Directive. Although that Directive deals with cross-border posting of temporary agency workers (for which the main provision is for the application of the law and collective agreements current in the Member State in which the work is carried out), it primarily deals with posted workers who continue to work under the direction of their employer in the Member State of origin. An essential element of the definition of an "assignment" in this new Directive should be that the temporary agency worker works under the direction and supervision of the user undertaking. To underline this and avoid confusion, the term "assignment" is used throughout. It is, of course, important that these specific terms are precisely formulated in all the language versions. Finally, the definition of employment and working conditions has been adapted to Article 3 of the Posting of Workers Directive, taking into account that the latter does not deal with an equal treatment provision but with the application of the employment and working conditions that pertain in the new workplace.

Basic protection - the first priority

Whilst the Commission's proposal focuses almost exclusively on the non-discrimination clause, this obligation not to treat temporary agency workers less favourably than comparable workers in the user undertaking is not the only issue in the rapporteur's proposals. She emphasises firstly the need for basic protection and immediately adds that basic protection has to be provided from day one and cannot, under any condition, be exempted or derogated from! This notion has received full support from the whole range of interested parties in the rapporteur's preparatory discussions. Amendments have thus been introduced to make clear that temporary agency workers should have the right to basic protection from day one.

Such basic protection includes labour law and social security protection. Without going into details or prescribing specific forms of protection, a new recital proposes that Member States should check and review whether their temporary agency workers are adequately covered by labour law and social protection. Furthermore, in the definitions, there is a deliberate reflection of the fact that only in a few Member States is it not (yet) evident that temporary agency workers have employee status or equivalent basic protection. The scope of the Directive covers not only those with employment contracts but also those in other employment relations (where the decisive factor is whether they work in a relation of dependency on, and under the direction and supervision of another person,) but nevertheless the rapporteur would clearly like to promote the idea that the Directive will be a step towards full employee rights for temporary agency workers and other 'atypical workers'.

The provision to not treat temporary agency workers less favourably than comparable workers in the user undertaking has been amended to bring it as far as possible into line with the Part-Time and Fixed-Term Work Directive. The situations in which user undertakings make recourse to temporary agency work differ considerably: sometimes a 'temp' is hired to replace a permanent worker on leave; in other cases, they are hired for a specific project for which extra manpower is needed. In the first instance, it is not so difficult to find a comparable worker; in the second, it may be more complicated. If the user undertaking had opted for the direct recruitment of a temporary worker (e.g. on a fixed term contract), he or she would have set wage levels and other conditions on the basis of tradition and existing standards.

Therefore, even in cases where there is no concrete existing comparable worker, a notional comparison is possible. In her amendments, the rapporteur shifts the emphasis from individual comparisons to this more generic approach and the reference to collective standards.

The exemptions from the non-discrimination provision

The rapporteur has made it very clear from the outset that she was not happy with the exemptions from the non-discrimination provision proposed in the Directive, particularly the last one that intends to exempt assignments that last up to 6 weeks;

- the derogation by collective agreement in Article 5.3 is an accepted and - in the eyes of the rapporteur, but also in the light of the European support for social dialogue and of commitments made by Member States in the International Labour Organisation - commendable approach which would facilitate tailormade solutions to widely differing situations;
- the exemption for temporary agency workers with a permanent employment contract in Article 5.2 underlines the preference for permanent and continuous employment - but has to be clearly qualified, particularly because the precise guarantees and conditions linked to that status depend on national law and practice;
- finally, the exemption in Article 5.4, in the view of the rapporteur, in fact does not fit in the Directive at all and would, if adopted as presently formulated, completely undermine the impact and effectiveness of the whole approach. Although the rapporteur was seriously intending to promote deletion of that exemption, she has noted the vigourous appeals from particular Member States who fear that, without such a provision, they will have major problems in implementing the Directive. She proposes to take such serious concerns into consideration but only in specific situations, so as not to make the exemption attractive for situations in which there are absolutely no grounds for it. Another qualification that for many of the consulted parties appears to be acceptable is the limitation of this exemption to pay. They all agree that with respect to other basic working and employment conditions, temporary agency workers should get basic protection from day one. With all the reservations that she still has, the rapporteur asks the Committee to judge whether, under the proposed conditions, this exemption can be accepted for the period up to the planned evaluation and review of the Directive.

11 September 2002

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Employment and Social Affairs

on the proposal for a directive of the European Parliament and the Council on working conditions for temporary workers

(COM(2002) 149 – C5-0140/2002 – 2002/0072(COD))

Draftsman: Giuseppe Gargani

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Ioannis Koukiadis draftsman at its meeting of 22 May 2002. However, following the vote on 10 September 2002, Mr Ioannis Koukiadis stepped down as draftsman and Mr Giuseppe Gargani was appointed in his place.

It considered the draft opinion at its meeting(s) of 4 June, 20 June and 10 September 2002.

At the last meeting it adopted the following amendments by 14 votes to 13, with 0 abstention.

The following were present for the vote: Giuseppe Gargani chairman and draftsman; Willi Rothley, vice-chairman; Ioannis Koukiadis, vice-chairman; Bill Miller, vice-chairman; Paolo Bartolozzi, Maria Berger, Ward Beysen, Michel J.M. Dary, Enrico Ferri, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, José María Gil-Robles Gil-Delgado, Malcolm Harbour, The Lord Inglewood, Othmar Karas (for Bert Doorn), Hans Karlsson, Piia-Noora Kauppi (for Rainer Wieland), Kurt Lechner, Klaus-Heiner Lehne, Neil MacCormick, Arlene McCarthy, Toine Manders, Linda McAvan, Manuel Medina Ortega, Pasqualina Napoletano (for Fiorella Ghilardotti pursuant to Rule 153(2)), Angelika Niebler (for Joachim Wuermeling), Anne-Marie Schaffner, Marianne L.P. Thyssen, Diana Wallis, and Stefano Zappalà.

SHORT JUSTIFICATION

GENERAL

Of the three forms of atypical employment, namely fixed-term contract work, part-time work and temporary work, the first two have been the subject of Community regulation, with directives which were concluded by means of collective agreements. For the third, however, difficulties have arisen and agreement has not been reached. These obstacles to regulating the issue, together with the persistence shown in seeking a solution, demonstrate the problem's dimensions.

Temporary employment agencies appeared several decades ago. Initially there were doubts as to their legality, because it was thought that their operations ran counter to the prohibition set out by the ILO's international conventions. Later, these doubts evaporated when it became clear that temporary employment firms are not financed by the workers.

Since then, the agencies have grown significantly and spread to all the European Union countries, since they fulfil the new economy's basic needs. There is no doubt that they have contributed to an increase in the active population, mainly by facilitating the entry of women and young people into the employment market. They have also assisted significantly in the improvement of businesses' competitiveness.

However, this form of atypical employment is, of all the atypical forms of employment, the one that lends itself most to infringements of Community legislation and the exploitation of labour. It is no accident that in many countries the practice is referred to in terms of borrowing or hiring out employees, viewing workers as objects. In addition, allegations concerning the use of temporary employment agencies as a means to promote illegal immigration are common. However, there are also dangers for the other workers. For these reasons, many European countries, specifically nine of the 15, undertook to pass legislation to introduce restrictions and, in many cases, prohibitions. It is therefore clear that the status of agencies in the EU Member States is particularly heterogeneous, ranging from operation without any restrictions to exhaustive regulation, and that this has an impact on the competitiveness of businesses and on the operation of the internal market.

It should, however, be said that the proposed directive does not aim to lay down new employment conditions, but to ensure that existing legal protection for this category of temporary worker is implemented, in order, so far as possible, to ensure that there is no unjustifiable discrimination in the treatment of temporary workers as compared with other workers. The proposal is an attempt to ensure that legislation which has already been published is applied, including Directive 96/71 concerning the posting of workers in the framework of the provision of services.

The starting point for all the problems which this form of employment engenders is that instead of the traditional bilateral relationship between an employee and employer, we have a three-way relationship with the following strange consequences: businesses which hire employees but do not employ them themselves (employers without employees), and businesses which employ employees but are not considered to be employers (employees without employers). This concept was quickly combated by the various national legislations: they accepted that the employer could have a split identity and divided responsibilities

between the two employers; this was also accepted by International Labour Convention No 181 in 1997.

COMMISSION'S PROPOSAL

The draft directive put forward by the Commission introduces two important elements. The first is the introduction, in Article 5, of a general principle prohibiting discrimination in working conditions between temporary workers and comparable workers in the user enterprise. However, it should be noted that this article introduces two exceptions, in paragraphs 2 and 4. The second important element of the proposal for a directive is Article 4, which refers to the review of restrictions and prohibitions by the Member States.

LEGAL BASIS

The legal basis chosen by the Commission for this proposal is Article 137, together with Article 136 of the Treaty. Clearly, the need for action with regard to the employment of temporary employees is adopted as a complement to the Member States' legislation in order to avoid unfair discrimination between temporary employees, and to strengthen the protection of minimum rights for those who are employed on a temporary basis, in order to achieve the objectives set out in Article 136 on the promotion of employment, in conjunction with the flexibility sought by undertakings in managing the labour market, and appropriate social protection.

According to Article 137(6), the provisions of that article shall not apply to pay, but this exception applies to the issue of setting pay levels and not to cases where it is merely a question of ensuring respect for the principle of non-discrimination regarding identical work. For this reason, moreover, in the previous directives on fixed-term contracts and part-time employment, which were drawn up by consensus, it is acknowledged that under point 7 of the Community Charter of the Fundamental Social Rights of Workers it is essential for working conditions to be harmonised in all three forms of atypical employment, namely part-time employment, fixed-term contract work and temporary work, while Article 6 of the EU Treaty also stipulates that the Union shall respect fundamental rights. In general, the directive aims merely to ensure legal certainty. The same idea prevails with regard to cross-border temporary work in Directive 96/71 on the posting of workers.

AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission[1]	Amendments by Parliament

Amendment 1
Article 2, point c) (new)

	c) to lay the foundations for further development of the temporary work sector, in order to promote job creation and make agency work more attractive.

Justification

Explicitly includes the objectives of the Directive in a substantive article.

Amendment 2
Article 3, paragraph 1, point b).

b) 'comparable worker' means ***a*** worker ***in the user undertaking*** occupying an identical or similar post to that occupied by the worker posted by the temporary agency, account being taken of seniority, qualifications and skills;	b) 'comparable worker' means ***another agency*** worker ***in the same or a comparable organisation*** occupying an identical or similar post to that occupied by the worker posted by the temporary agency, account being taken of seniority, qualifications and skills;

Justification

Redefines 'comparable worker' in a realistic manner, in relation to the overall objectives of the Directive to encourage high quality agency work.

Amendment 3
Article 3, paragraph 1, point d), i)

[1] OJ C 203 E, 27.8.2002, p. 1

i) the duration of working time, rest periods, night work, ***paid*** holidays and public holidays;	i) the duration of working time, rest periods, night work, holidays and public holidays;

Justification

Holidays can be paid or unpaid.

Amendment 4
Article 3, paragraph 1, point d), ii)

ii) pay;	***Delete***

Justification

Pay should not be covered by this Directive.

Amendment 5
Article 5, paragraph 4

4. Without prejudice to the provisions of paragraphs 2 and 3 above, Member States may provide that paragraph 1 shall not apply where a temporary worker works on an assignment or series of assignments with the same user enterprise in a post which, due to its duration or nature, can be accomplished in a period not exceeding ***six weeks***.	4. Without prejudice to the provisions of paragraphs 2 and 3 above, Member States may provide that paragraph 1 shall not apply where a temporary worker works on an assignment or series of assignments with the same user enterprise in a post which, due to its duration or nature, can be accomplished in a period not exceeding ***twelve months.***

Justification

A cut-off point of twelve months allows agency workers to be used to add value to an enterprise and to provide extra flexibility to develop new activities. Twelve months will also allow a full period of maternity leave to be covered by a temporary worker. The six-week proposal is entirely unrealistic and undermines the objectives of the Directive.

Amendment 6
Article 5, paragraph 5

5. When this directive calls for a comparison to be made with a comparable worker in the user undertaking but no such worker exists, reference shall be made to the collective agreement applicable in the user undertaking; if no such collective agreement exists, the comparison will be made by reference to the collective agreement applicable to the temporary work agency; if no collective agreement is applicable, the basic working and employment conditions of temporary workers will be determined by national legislation and practices.	***Delete***

Justification

It should not be for an EU Directive to determine prescriptive details about comparability of workers within such a diverse sector of 'atypical' workers in different Member States.

Amendment 7
Article 5, paragraph 6

6. The implementing procedures for this Article shall be defined by the Member States ***after consultation of the social partners.*** The Member States may also entrust the social partners at the appropriate level with the task of defining these procedures for this chapter by means of a negotiated agreement.	6. The implementing procedures for this Article shall be defined by the Member States. The Member States may also entrust the social partners at the appropriate level with the task of defining these procedures for this chapter by means of a negotiated agreement ***in accordance with national practices***.

Justification

The importance of differing national practices in differing Member States should be explicitly recognised.

Amendment 8
Article 6, paragraph 3

3. Temporary agencies shall not charge workers any fees in exchange for arranging for them to be recruited by a user undertaking.	***Delete.***

Justification

It should not be for an EU Directive to determine whether and how fees should be charged by Temporary Agencies in differing Member States.

Amendment 9
Article 7, paragraph 2

Member States may provide that, under conditions that they define, these workers count for the purposes of calculating the threshold above which bodies representing workers provided for by national and Community legislation should be formed in the user undertaking.	***Delete.***

Justification

Self-explanatory.

Amendment 10
Article 11, paragraph 1

1. The Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this directive by [two years after adoption] at the latest, or shall ensure that the social partners introduce the necessary provisions by the way of an agreement, whereby the Member States must make all the necessary arrangements to enable them to guarantee at any time that the objectives of this directive are being attained. They shall forthwith inform the Commission thereof.	1. The Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this directive by [two years after adoption] at the latest, or shall ensure that, ***where applicable in accordance with their national legislation or practices,*** the social partners introduce the necessary provisions by the way of an agreement, whereby the Member States must make all the necessary arrangements to enable them to guarantee at any time that the objectives of this directive are being attained. They shall forthwith inform the Commission thereof.

Justification

This Directive purports to make agency work more attractive: the differing circumstances pertaining in each Member States should determine how the best implementation method to

ensure this goal is achieved, and this provision should therefore allow a wide degree of flexibility in transposition.

Amendment 11
Article 11, paragraph 3 (new)

3. They should transpose these provisions in a manner consistent with promoting job creation and making agency work more attractive, recognising the different circumstances pertaining to their own Member State.

Justification

Explicitly recognises the importance of national legislation and practices in the context of the overall objectives of the Directive.

29 August 2002

OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES

for the Committee on Employment and Social Affairs

on the proposal for a Council directive on Temporary work: protective framework for workers, relationship with the temporary agency
(COM(2002) 149 – C5-0140/2002 – 2002/0072(COD))

Draftsperson: Thomas Mann

PROCEDURE

The Committee on Women's Rights and Equal Opportunities appointed Thomas Mann draftsperson at its meeting of 18 April 2002.

It considered the draft opinion at its meetings of 9 July 2002 and 27 August 2002.

At the last meeting it adopted the following amendments by 20 votes, with 3 abstentions.

The following were present for the vote: Anna Karamanou chairperson; Olga Zrihen Zaari vice-chairperson; Thomas Mann draftsperson; María Antonia Avilés Perea, María del Pilar Ayuso González, Regina Bastos, Armonia Bordes, Lone Dybkjær, Ilda Figueiredo, Fiorella Ghilardotti, Koldo Gorostiaga Atxalandabaso, Lissy Gröner, María Izquierdo Rojo, Hans Karlsson, Rodi Kratsa-Tsagaropoulou, Maria Martens, Emilia Franziska Müller, Elena Ornella Paciotti, Christa Prets, Patsy Sörensen, Joke Swiebel, Elena Valenciano Martínez-Orozco and Lousewies van der Laan.

SHORT JUSTIFICATION

In March 2000, the European Council meeting in Lisbon adopted the strategy to make the Union the most competitive and dynamic knowledge-based economy in the world capable of sustained economic growth with more and better jobs and greater social cohesion.

The aim of the strategy is to achieve full employment by 2010, i.e. a rate of employment of 70% overall, at least 60% for women and 50% for older workers. The employment policy guidelines for 2001 and the broad guidelines for economic policy for 2001 therefore recommend the development of diversified and flexible forms of employment relationships and labour contracts, e.g. temporary work.

The European Union must promote more flexible forms of work and reform legal provisions and contractual agreements to create more and qualitatively better jobs. This also applies to the temporary sector, the main feature of which is a 'three-way relationship' between an agency, an employee and a user undertaking.

Different national rules apply throughout the EU in regard to both the activities of temporary agencies and working conditions for temporary workers. The Commission's main concern is to establish non-discrimination for temporary workers in relation to comparable, permanently employed workers. Factors to be taken into account include working time, paid holiday, night work and working hours for pregnant women and nursing mothers. Exceptions are pension entitlements and special payments such as Christmas bonuses. The minimum period of employment to qualify for equal status is six weeks.

As regards the equal status of men and women, the picture varies widely in relation to temporary work between the Member States. According to the Commission, in some countries more than ¾ of temporary workers are men, while in others the division is more or less equal or women are in the majority. The industry, construction and public works sectors are dominated by men, e.g. Austria (87%), Germany (80%), France (74%), Luxembourg (77%), Spain (62%) and Belgium (60%). In the Netherlands, Portugal and the United Kingdom, there is a relative balance between the two sectors. In Finland and Sweden, however, women are in the majority, accounting for some 80% of all temporary workers.

Your draftsperson has devoted particular attention to the situation of women on the employment market in general and the temporary market in particular. In order to take greater account of the situation of women, it would seem valid to make frequent reference to gender on certain points.

One of the reasons for the absence of women from the labour market is the difficulty of combining family life and employment. According to Eurostat, the EU's statistical office, the current rate of employment for couples without children is 42% in Spain and 79% in the United Kingdom. For couples with children, the employment rate ranges from 43% in Spain to 74% in Portugal.

Temporary work can serve to offset a shortage of permanent staff or a temporary increase in the workload. It offers the lesser qualified and women, in particular, who have been absent from the labour market for a good length of time, an opportunity to step back into working life.

Temporary workers should not, however, be regarded as 'rationalisation factors'. There is an inherent risk that by employing them, the more costly permanent workforce is cut back. The advantage of hiring temporary workers is possibly undermined in that social acceptance, payment or the quality of the temporary work falls short of expectations. As regards working conditions, job offers and women's pay, there is a need for great improvement in this sector.

AMENDMENTS

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission[1]	Amendments by Parliament
	Amendment 1 Recital 1a (new)
	(1a) Article 21(1) of the Charter of Fundamental Rights of the European Union prohibits discrimination based on any ground, including sex. Article 23 of the Charter of Fundamental Rights of the European Union stipulates that equality between men and women must be ensured in all areas, including employment, work and pay. In the European Community, in 1957 Article 119 of the Treaty of Rome enshrined the principle that men and women should receive equal pay for equal work. Article 141 of the EC Treaty establishes the legal basis for prohibiting discrimination between men and women for work of equal value. Furthermore, Articles 2 and 3(2) of the Treaty on European Union stipulate respectively that promoting equality between men and women and eliminating all inequalities between men and women are goals of the Community.

[1] OJ C 203 E, 27.8.2002, p. 1

Justification

Articles 2 and 3 of the Treaty of Amsterdam should be included among the legal bases for policies and actions by the European Union to promote equality between men and women.

Amendment 2
Recital 3

(3) The conclusions of the European Council in Lisbon of 23 and 24 March 2000 set the European Union a new strategic target, namely to "become the most competitive and most dynamic knowledge-based economy in the world, capable of sustained economic growth with more and better jobs and greater social cohesion".	(3) The conclusions of the European Council in Lisbon of 23 and 24 March 2000 set the European Union a new strategic target, namely to "become the most competitive and most dynamic knowledge-based economy in the world, capable of sustained economic growth with more and better jobs and greater social cohesion". ***The Union will thus put itself in a position to achieve full employment, i.e. a rate of employment of 70% overall, at least 60% for women and 50% for older workers, by 2010.***

Justification

The figures clarify the Lisbon targets.

Amendment 3
Recital 11

(11) Temporary work should meet undertakings' needs for flexibility and employees' need to reconcile their working and private lives and contribute to job creation and participation and integration in the labour market.	(11) Temporary work should meet undertakings' needs for flexibility and employees' need to reconcile their working and private lives and contribute to job creation and participation and integration in the labour market ***by increasing job opportunities, particularly for women***.

Amendment 4
Recital 14a (new)

(14a) Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breast-feeding and equal treatment in statutory and occupational social security schemes applies to all employees, as established by Article 33(1) of the Charter of Fundamental Rights. The Charter also enshrines respect for the entitlement to social security benefits, including childcare facilities, and social security provision for maternity, illness or industrial accident. Furthermore, Article 33(2) of the Charter of Fundamental Rights stipulates that, in order to reconcile family and professional life, everyone has the right to protection from dismissal and the right to paid maternity leave or parental leave following the birth or adoption of a child. In particular, the amendment of Directive 76/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, prohibits any discrimination on the grounds of sex, including sexual harassment, and enshrines the right to maternity, paternity and parental leave.

Justification

It seems necessary to mention the amendment of Directive 76/207/EEC, under which the principle of non-discrimination on grounds of sex at the workplace is extended to include protection against direct and indirect discrimination, harassment and sexual harassment and protection of the right to maternity, paternity and parental leave (aimed at reconciling family and professional life) and provides for the promotion of positive actions and for enterprises to be asked to draw up plans to promote equality.

Amendment 5
Recital 15

(15) With respect to basic working and employment conditions, temporary workers should not be treated any less favourably than a "comparable worker", i.e. a worker in the user undertaking in an identical or similar job, taking into account seniority, qualifications and skills.	(15) With respect to basic working and employment conditions, temporary workers should not be treated any less favourably than a "comparable worker", i.e. a worker in the user undertaking in an identical or similar job, taking into account seniority, qualifications and skills ***and with no discrimination on grounds of sex***.

Amendment 6
Recital 16

(16) However, differences in treatment are acceptable if they are objectively and reasonably justified by a legitimate aim under national law.	(16) However, differences in treatment are acceptable if they are objectively and reasonably justified by a legitimate aim under national law. ***They must be compatible with the Charter of Fundamental Rights and with the EU Treaties, regulations and all directives governing the principle of non-discrimination.***

Justification

It is important to include reference to the various European regulations and directives which enshrine and regulate the principle of non-discrimination in general terms.

Amendment 7
Recital 19

(19) There should be some flexibility in the application of the principle of non-discrimination in cases of missions effected to accomplish a job which, due to its nature or duration, lasts less than six weeks.	***Deleted***

Amendment 8
Recital 21

Not applicable to English version

Amendment 9
Recital 22a (new)

(22a) In the Member States of the EU, there is still gender-specific pay discrimination between men and women performing the same work or work of equal value.

Justification

Clarification of pay discrimination. According to statistics provided by the European Community Household Panel (ECHP) and figures provided by the Structure of Earnings Survey (SES), in 1995 women earned only between 72% and 83% of men's pay, despite performing equal work or work of equal value. The biggest disparities are in the United Kingdom, Greece and the Netherlands; the lowest wage differentials are in Sweden, Belgium and Luxembourg. More recent figures soon to be published by Eurostat, the European Union's Statistical Service, show no improvement - on the contrary, in Austria, for example, pay discrimination has increased in certain sectors.

Amendment 10
Article 3, paragraph 1, point b)

b) "comparable worker" means a worker in the user undertaking occupying an identical or similar post to that occupied by the worker posted by the temporary agency, account being taken of seniority, qualifications and skills.	b) "comparable worker" means a worker in the user undertaking occupying an identical or similar post to that occupied by the worker posted by the temporary agency, account being taken of seniority, qualifications and skills***, and with no discrimination on grounds of sex***.

Amendment 11
Article 4, paragraph 2a (new)

2a. Temporary workers shall not be employed to replace regular employees during industrial action or disputes.

Justification

This provision was already included in the draft agreement between the social partners and did not give rise to any disagreement.

Amendment 12
Article 5, paragraph 1a (new)

1a. Basic protection as regards essential working conditions and employment protection which is mainly of interest to women and employees with family responsibilities, as well as protection against discrimination and intimidation, maternity protection and maternity and parental leave, must be available from day one for all temporary workers, whatever type of contract they have.

Justification

In order to ensure equal treatment for all employees in the same workplace and to provide proper protection for temporary workers, appropriate basic protection must be offered from day one of the employment contract, inter alia as regards parental leave and discrimination.

Amendment 13
Article 5, paragraph 2

2. Member States may provide that an exemption be made to the principle established in paragraph 1 when temporary workers ***who*** have a permanent contract of employment with a temporary agency	2. Member States may provide that an exemption be made to the principle established in paragraph 1 when temporary workers have a permanent contract of employment with a temporary agency ***and***

continue to be paid in the time between postings.	***full pay and social protection are also provided*** in the time between postings.

Justification

When temporary workers are bound to an employment agency by a permanent contract their income and social protection should be guaranteed.

Amendment 14
Article 5, paragraph 4

4. Without prejudice to the provisions of paragraphs 2 and 3 above, Member States may provide that paragraph 1 shall not apply where a temporary worker works on an assignment or series of assignments with the same user enterprise in a post which, due to its duration or nature, can be accomplished in a period not exceeding six weeks. Member States shall take appropriate measures with a view to preventing misuse in the application of this paragraph.	***Deleted***

Justification

This exemption clause conflicts with the very nature of temporary work, which can by definition be very limited in time. This provision could open the way to abuse, as the Commission itself admits in its second paragraph. This clause should therefore be deleted.

Amendment 15
Article 7, first subparagraph

Temporary workers shall count for the purposes of calculating the threshold above which bodies representing workers provided for under national and Community legislation should be formed at the temporary agency.	Temporary workers shall count for the purposes of calculating the threshold above which bodies representing workers provided for under national and Community legislation should be formed at the temporary agency. ***Women, in particular, are called upon to take an active part in this process in application of the principle of equality and to enjoy positive measures aimed at promoting a balance between men***

and women within trade union organisations at all levels.

Justification

The amendment is designed to support representation of women within trade unions (and is in line with the own-initiative report by the Committee on Women's Rights and Equal Opportunities on representation of women among social partners in the European Union).