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*****II**

RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a directive of the European Parliament and of the Council on temporary agency work
(10599/2/2008 – C6-0327/2008 – 2002/0072(COD))

Committee on Employment and Social Affairs

Rapporteur: Harlem Désir

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***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. 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). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Council common position for adopting a directive of the European Parliament and of the Council on temporary agency work (10599/2/2008 – C6-0327/2008 – 2002/0072(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (10599/2/2008 – C6-0327/2008),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2002)0149),
 - having regard to the amended Commission proposal (COM(2002)0701),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Employment and Social Affairs (A6-0373/2008),
1. Approves the common position;
 2. Notes that the act is adopted in accordance with the common position;
 3. Instructs its President to sign the act with the President of the Council pursuant to Article 254(1) of the EC Treaty;
 4. Instructs its Secretary-General to sign the act, once it has been verified that all the procedures have been duly completed, and, in agreement with the Secretary-General of the Council, to have it published in the Official Journal of the European Union;
 5. Instructs its President to forward its position to the Council, the Commission and the parliaments of the Member States..

¹ OJ C 25 E, 29.1.2004, p. 368.

EXPLANATORY STATEMENT

1. Introduction

On 20 March 2002 the Commission adopted, as part of the Lisbon Strategy, a proposal for a directive on 'working conditions for temporary workers' seeking to guarantee a minimum level of protection for temporary workers and help the temporary employment sector to work out appropriate options for employers and workers and a framework for them to operate in.

The proposal for a directive established the principle of non-discrimination between temporary agency workers and comparable workers in the user undertakings, including in the matter of pay, provided that the employment relationship with the same employer lasts for more than six weeks. However, a derogation from this principle was provided for in the case of collective agreements.

The proposal for a directive followed the failure of a year of negotiations between the social partners in 2000-2001.

Acting in accordance with Article 251 of the Treaty, the European Parliament gave its opinion at first reading on 21 November 2002. Numerous amendments were made to the Commission proposal with a view to guaranteeing essential protection to temporary workers and to restricting, and providing a framework for, any derogations from the non-discrimination principle.

On 28 November 2002 the Commission adopted an amended proposal taking account of Parliament's opinion. This amended proposal for a directive was held up for six years in the Council of Ministers, but the Council eventually reached political agreement on a common position at its meeting of 9-10 June 2008. In accordance with Article 251(2) of the EC Treaty, it formally adopted its common position on 15 September 2008.

II. Contributions of the first reading

Your rapporteur is anxious to underline the importance of the work carried out at first reading in 2002 by the rapporteur Ieke van den Burg. The amendments made to the Commission proposal were guided by three major objectives arising from the principle of equal treatment between workers:

- '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'; and finally
- 'recognition of the temporary agency sector as legitimate and professional business by removing unnecessary restrictions and permits/bans'.

Parliament accordingly adopted amendments seeking to make clear that all temporary agency workers should have the right to basic protection from day one and that this protection includes the right to benefit from labour law, equal pay with other staff and social protection.

Parliament also adopted amendments seeking to reject exemptions from the non-discrimination provision except in particular cases (e.g. in the case of an open-ended contract with a temporary employment agency or where collective agreements ensure adequate protection).

III. The common position

The common position takes account of the need to establish a suitable framework for the use of temporary agency work with a view to contributing effectively to the creation of jobs and to the development of flexible forms of working, while protecting workers.

This common position has incorporated the great majority of the amendments adopted by Parliament at first reading, among them the amendments guaranteeing equal treatment (including equal pay) between the workers of the user undertaking.

The Council has thus taken the view that equal treatment from day one should be the general rule, and that any derogation from that principle should be agreed by the social partners, by collective negotiations or by agreements with the social partners at national level (Article 5).

Parliament's amendments on the definitions of the basic working and employment conditions of temporary agency workers, particularly the insertion of 'pay' (Article 3), have also been incorporated in the common position. Finally, the Council's common position has retained the amendments on access to employment, collective facilities and vocational training (Article 6) and on the representation of temporary agency workers (Article 7).

Your rapporteur also stresses that, while health, safety and hygiene at work have not been incorporated as basic working and employment conditions as Parliament had asked, they are in practice already guaranteed by Council Directive No 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship.

IV. Recommendations for second reading

Large disparities still exist today between different countries' national legislations on temporary agency work. There are also sometimes major inequalities in pay, and tougher working conditions, for temporary workers. In particular, such workers are more exposed to physical risks, and the intensity and pace of their work are often higher than for other workers.

In Germany, the Netherlands and Spain, the regulation of the sector is essentially covered by general legislation, and there is no specific body of rules.

In the United Kingdom and Ireland, the legislative framework in place is very flexible.

In Belgium, France and Italy, there is specific interim legislation covering the relationship between the temporary employment agency, the user undertaking and the worker, and the status of the worker.

Nonetheless, in all countries of the European Union, temporary agency work is on the increase, even though the proportion of workers concerned varies considerably from one country to another. There is thus even more justification and need for the adoption of legislation to protect temporary agency workers and clarify the framework within which temporary employment agencies operate than there was six years ago.

In preparing the second reading report, your rapporteur met representatives of all the interested parties, and in particular of the European Trade Union Confederation (ETUC) as well as members of Eurociett and Uni-Europa, which represent temporary employment agencies at European level.

ETUC gave your rapporteur a positive assessment of the Council's common position. In its view, this agreement is decisive, particularly since it respects and enhances the principle of equal treatment and the principle that derogations should be possible only via collective agreements. It also expressed its opinion on this matter in its press release of 10 June 2008.

Eurociett and Uni-Europa also informed your rapporteur of their support for the Council's common position. They had already expressed this support in their press release of 10 June 2008.

There is therefore an urgent need to adopt Community legislation to protect temporary agency workers in Europe. In your rapporteur's view, the European Parliament – which has been speaking out in favour of this directive for six years and is now seeing its suggestions for improvements to the initial proposal taken over by the Council – is in a position to bring about the immediate adoption of this worker protection legislation by approving the report without amendment at second reading.

Your rapporteur therefore recommends rapid adoption of the report without amendment, to enable this proposal for a directive to become law.

PROCEDURE

| | |
|---|---|
| Title | Protection for temporary workers and the relationship between the agency and the worker |
| References | 10599/2/2008 – C6-0327/2008 – 2002/0072(COD) |
| Date of Parliament's first reading – P number | 21.11.2002 T5-0562/2002 |
| Commission proposal | COM(2002)0149 - C5-0140/2002 |
| Amended Commission proposal | COM(2002)0701 |
| Date receipt of common position announced in plenary | 22.9.2008 |
| Committee responsible Date announced in plenary | EMPL 22.9.2008 |
| Rapporteur(s) Date appointed | Harlem Désir 24.6.2008 |
| Discussed in committee | 6.10.2008 |
| Date adopted | 7.10.2008 |
| Result of final vote | +: 30 -: 1 0: 3 |
| Members present for the final vote | Jan Andersson, Edit Bauer, Iles Braghetto, Philip Bushill-Matthews, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Luigi Cocilovo, Jean Louis Cottigny, Jan Cremers, Proinsias De Rossa, Harlem Désir, Richard Falbr, Roger Helmer, Stephen Hughes, Ona Juknevičienė, Raymond Langendries, Elizabeth Lynne, Thomas Mann, Maria Matsouka, Elisabeth Morin, Juan Andrés Naranjo Escobar, Csaba Óry, Marie Panayotopoulos-Cassiotou, Rovana Plumb, Bilyana Ilieva Raeva, José Albino Silva Peneda, Jean Spautz, Gabriele Stauner, Ewa Tomaszewska, Anne Van Lancker, Gabriele Zimmer |
| Substitute(s) present for the final vote | Richard Howitt, Jamila Madeira |
| Date tabled | 8.10.2008 |